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and Debra Figone, in her official capacity

(ENDORSED)
FILED
FEB - 7 2013
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _______ DEPUTY
L. Barajas

IN THE SUPERIOR COURT FOR THE

COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS ASSOCIATION, Plaintiff, v. CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE RETIREMENT PLAN OF CITY OF SAN JOSE, and DOES 1-10 inclusive., Defendants.	Case No. 1-12-CV-225926 BY FAX [*Consolidated with Case Nos. 112CV225928, 112CV226570, 112CV226574, 112CV227864]* **DECLARATION OF ALEX GURZA IN SUPPORT OF DEFENDANTS' AND CROSS-COMPLAINANT'S MOTION FOR SUMMARY ADJUDICATION** **VOLUME 3** **EXHIBITS 35 THROUGH 61**
AND RELATED CROSS-COMPLAINT AND CONSOLIDATED ACTIONS	Date: April 23, 2013 Time: 9:00 a.m. Dept.: 8 Complaint Filed: June 6, 2012 Trial Date: None Set

I, ALEX GURZA, declare:

1. I am a Deputy City Manager and the Director of the Office of Employee Relations in the City Manager's Office for the City of San Jose (hereinafter, "City"). I submit this declaration in support of the City's Motion for Summary Adjudication. I have personal knowledge of the facts set forth below and if called as a witness I could and would testify competently thereto.

2. I have been employed by the City of San Jose in the Office of Employee Relations since October 3, 1994. During that time, I have been responsible for the formulation of City policies in connection with employee compensation and benefits and for the negotiation of wages, benefits and other terms and conditions of employment with the labor unions that represent City employees.

The City of San Jose's Workforce

3. The City employs approximately 5400 full-time equivalents ("FTEs"); FTEs are the combined total number of budgeted full-time positions. For example, one full-time position equals one FTE, and two half-time positions equal one FTE. The majority of the workforce is organized. The following labor unions represent City employees:

- Association of Building, Mechanical and Electrical Inspectors (ABMEI) – approximately 67 FTEs.
- Association of Engineers and Architects (AEA), IFPTE Local 21 (Units 041, 042 and 043) – approximately 214 FTEs
- Association of Legal Professionals (ALP) – approximately 36 FTEs
- Association of Maintenance Supervisory Personnel (AMSP), IFPTE Local 21 – approximately 78 FTEs
- City Association of Management Personnel (CAMP), IFPTE Local 21 – approximately 329 FTEs
- Confidential Employees' Organization (CEO), AFSCME Local No. 101 – approximately 189 FTEs
- International Association of Firefighters (IAFF), Local 230 – approximately ___ 646 FTEs
- International Brotherhood of Electrical Workers (IBEW), Local 332 – approximately 73 FTEs
- International Union of Operating Engineers, Local No. 3 (OE#3) – approximately 664 FTEs
- Municipal Employees' Federation (MEF), AFSCME Local 101 – approximately 1851 FTEs
- San Jose Police Officers' Association (SJPOA) – approximately 1107 FTEs

4. The City workforce also includes two units of unrepresented employees, the Executive Management and Professional Employees (Unit 99), and Other Unclassified Non-

Management Employees (Units 81 and 82).

5. The City establishes terms and conditions of employment with its labor unions through collective bargaining. Periodically, the City and labor unions enter into Agreements, which are ratified by the union membership and approved by the City Council through enactment of resolutions. If the City and labor unions cannot come to agreement, the City may implement after impasse procedures the City's Last, Best and Final Offer ("LBF") by City Council resolution, except that if the City and the unions representing police officers and firefighters do not come to an agreement, depending on the issue, the City Charter provides for interest arbitration to resolve the dispute. For unrepresented employees, the City Council establishes compensation by resolution. Retirees are not represented by any City labor union.

Plaintiffs In This Case

6. Plaintiffs in these five consolidated cases are either City labor unions or current and retired former members of City labor unions, including:

- Plaintiffs in the *Mukhar* case are current and retired former members of the Association of Engineers and Architects [Mukhar is president of AEA], and Association of Maintenance Supervisory Personnel ([Dapp is president of AMSP.
- Plaintiffs in the *Sapien* case are current and retired former members of the International Association of Firefighters (IAFF), Local 230.
- Plaintiffs in the *Harris* case are current and retired former members of the International Union of Operating Engineers, Local No. 3 (OE#3).
- Plaintiff AFSCME is a labor union representing two City bargaining units (Municipal Employees' Federation [MEF] and Confidential Employees' Organization [CEO]).
- Plaintiff SJPOA is a City labor union.

City Retirement Plans

7. The City has two retirement plans, the Police and Fire Department Retirement Plan, for police officers and firefighters, and the Federated City Employees' Retirement System, for all other employees. The provisions for these plans are established in the City Charter, City Municipal Code and agreements with labor unions. The plans include both pension and retiree health benefits. The plans are administered by two independent retirement boards, which invest

retirement funds, contract for audit and actuarial services, issue financial reports and determine employee eligibility for benefits.

8. Based on actuarial reports, the boards establish yearly contribution rates to be paid by employees and the City, as a percentage of salary, to fund employee retirement benefits. Although the independent retirement boards determine the yearly contributions needed to fund the plans, the Charter, Municipal Code and agreements with unions determine how contributions are to be divided between employees and the City.

Measure B

9. Beginning in 2009, the City's contributions for retiree pensions began to dramatically increase and create significant deficits in the City budget. In September 2010, the City's Auditor released a report entitled "Pension Sustainability: Rising Pension Costs Threaten The City's Ability To Maintain Service Levels – Alternatives For A Sustainable Future." The Auditor's Report contained a number of recommendations to reform the City's retirement systems and decrease costs. A true and correct copy of the Auditor's report is attached as Exhibit 1.

10. In May 2011, the City Manager released the Fiscal Reform Plan with recommendations to achieve cost reductions and/or new revenues for the General Fund to allow for a restoration of services, including addressing increasing retirement costs.

11. In 2011, the City began to meet and confer with City unions over a plan to amend the City Charter to reform the City's retirement systems. Under the requirements of *Seal Beach Police Officers' Assn. v. City of Seal Beach*, 36 Cal. 3d 591 (1984), the City met and conferred for over a year but ultimately did not reach any consensus with unions over retirement reform measures.

12. In March 2012, the City Council voted to place Measure B on the ballot to amend the City Charter's retirement provisions. In June 2012, the voters enacted Measure B by approximately 70 percent in favor of Measure B. Soon after, City labor unions, employees and retirees filed the five actions that were later consolidated under the caption for this case.

13. Measure B contains provisions that address employee contributions to pension and retiree health benefits, the creation of alternative pension plans, the end of a supplemental retiree

benefit reserve, disability retirement requirements, and suspension of cost of living increases in the event of an emergency, among other issues.

Employee Contributions Towards Pension Plans

14. Measure B requires employees to make additional pension contributions to the retirement system to defray pension plan unfunded liabilities unless they voluntarily elect to enroll in an alternative lower cost plan. Specifically, Measure B Section 1506-A requires employees to make additional payments in increments of 4% of pensionable pay per year, up to a maximum of 16% of pensionable pay per year, but no more than 50% of the costs per year to amortize any pension plan unfunded liabilities. (Section 1506-A). These contributions are credited to employees' retirement accounts.

15. Prior to the enactment of Measure B, City employees made "additional" pension contributions under agreements between the City and its labor unions for the purpose of paying towards the City's unfunded pension liabilities. City employees also made, or were required by the City to make, wage concessions as an alternative to making additional pension contributions. The City considers retirement contributions, wages and other benefits to be part of "Total Compensation" for City employees. "Total Compensation" is the total cost to the City of pay and benefits, including base pay, retirement contributions, health insurance, and other benefits.

16. As stated above, in 2009, the City faced significantly increased retirement contributions towards employee pension benefits and a large deficit caused in large part by the increased contributions. To mitigate the City's fiscal shortfall, in 2010 the City negotiated with City unions to achieve a 10% reduction in total compensation for the purpose of reducing the potentially significant service reduction and layoffs of City employees required to balance the City budget.

17. In 2010, a coalition of City unions proposed that the City achieve this compensation reduction by employees making an "additional" pension contribution to defray the City's required pension contributions. This coalition consisted of AEA, ABMEI, AMSP, CAMP, IBEW and OE#3 ("Coalition"). (Plaintiffs in the *Mukhar* case are members and/or former members of AEA and AMSP [Plaintiff Mukhar is president of AEA, plaintiff Dapp is president of

AMSP], and plaintiffs in the *Harris* case are members and/or former members of OE#3.)

18. The SJPOA and IAFF also offered proposals to achieve compensation reduction via employees making an "additional" pension contribution to defray the City's required pension contributions. (The SJPOA is plaintiff in the *SJPOA* case; plaintiffs in the *Sapien* case are members and/or former members of IAFF.)

19. The Coalition unions took the position that the additional employee retirement contribution of 10% could be authorized by an amendment to the Municipal Code and did not violate the City Charter. An initial proposal received from the Coalition stated:

> 5.1.2. Additional Retirement Contribution.
>
> Effective June 27, 2010 through June 28, 2011, all employees will make additional retirement contributions in an amount equivalent to 10% of total compensation effective June 27, 2010. The amounts so contributed will be applied to subsidize and thus reduce the prior service contributions that the City would otherwise be required to make. The parties specifically understand that this agreement neither alters nor conflicts with the City Charter Section 1505(c) because under this agreement, employees will be subsidizing the City's Section 1505(c) required contribution. This employee retirement contribution is in addition to and apart from the employee retirement contribution rates established and approved by the Federated City Employees' Retirement System Board. This additional employee contribution shall be reduced by half (50%) effective the first payroll period for Fiscal Year 2012.
>
> * * * *
>
> In order to implement this provision, the City may be required to amend the Federated City Employees' Retirement System by adopting an ordinance amending the San Jose Municipal Code. These contributions shall be treated in the same manner as any other employee contributions. Accordingly, these additional employee contributions will be made on a pre-tax basis through payroll deductions pursuant to IRS Code Section 414(h)(2) and will be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

A true and correct copy of the Coalition proposal provided to the City, dated 6/18/10, 4:25 p.m., is attached as Exhibit 2. True and correct copies of additional union proposals by Coalition members and by the SJPOA and IAFF to pay an increased employee contribution rate are attached as Exhibits 3 thru 6.

20. During the negotiations over the payment of the additional pension contributions, representatives of the Coalition unions and the City, including myself, discussed the legality of the additional contributions under the City Charter. Under the City Charter, the contribution rate to pay for "current service or current service benefits" may not exceed the ratio of 3 for employees to 8 for the City, but the contribution rate to pay for "prior service or prior service benefits" is not subject to any ratio. The Coalition unions took the position that the additional retirement contributions for unfunded liabilities were to pay for "prior service" which is not subject to the 3 to 8 ratio under the Charter. Thus, the unions took the position that the employees could pay the entire pension contribution required for the unfunded liabilities.

21. In a letter dated June 17, 2010, the Coalition unions transmitted copies of their proposal to make the additional pension contributions to the Mayor and City Council. A true and correct copy of the letter and attached agreements that we received is attached as Exhibit 7.

22. During the City Council hearing on the proposal for employees to make additional pension contributions, Christopher Platten, an attorney representing members of the Coalition, stated the position of his clients that the City Charter was not a barrier to employees paying the increased contribution rates. A transcript of his comments are attached as Exhibit 8.

23. For the three year period, 2010, 2011 and 2012, the union Agreements or Last Best and Final Offers, with authorizing resolutions, are attached as Exhibits 9 thru 34 in alphabetical order by union. The memoranda from myself and other City employees in connection with the City resolutions contained in Exhibits 9 thru 34 were made by and within the scope of the employees' public duties, were made at or near the time of the act, condition or event described in the memoranda, and reflect information from City financial and collective bargaining records.

24. During fiscal year 2010-2011, the following six unions agreed that their members would pay additional employee pension contributions, both ongoing and one-time, as well as a one-time base pay reduction, equivalent to approximately 10% of total compensation, except the POA agreed that its members would pay 5.25% in additional employee pension contributions on a one-time basis. The additional contributions and pay reductions were to be used to defray pension plan unfunded liabilities.

- Association of Engineers and Architects (AEA) (plaintiff Mukhar, lead plaintiff in the *Mukhar* case, is president of the union). [Exhibit 11]

- Association of Maintenance Supervisory Personnel (AMSP) (plaintiff Dapp, a plaintiff in the *Mukhar* case, is president of the union). [Exhibit 15]

- City Association of Management Personnel (CAMP). [Exhibit 17]

- International Brotherhood of Electrical Workers, Local 332 (IBEW). [Exhibit 23]

- Operating Engineers, Local No. 3 (OE#3) (which represents plaintiffs in the *Harris* case). [Exhibit 25]

- San Jose Police Officers' Association (SJPOA) (plaintiff in the *SJPOA* case). [Exhibit 29]

True and correct copies of the Agreements, and authorizing resolutions are attached as indicated above next to each union.

25. The following unions or groups agreed to a wage reduction rather than paying additional employee pension contribution rates, or the City imposed a wage reduction in the form of a Last Best and Final Offer or by resolution:

- Association of Building, Mechanical and Electrical Inspectors (ABMEI). [Exhibit 9]
- Association of Legal Professionals (ALP). [Exhibit 13]
- Executive Management and Professional Employees (Unit 99). [Exhibits 32, 33]
- Other Unclassified Non-Management Employees (Units 81 and 82). [Exhibit 32, 33]

True and correct copies of these Agreements or Last Best and Final Offers, and authorizing resolutions, are attached as indicated above next to each union.

26. Only three bargaining units did not come to an agreement with the City during 2010-2011. The International Association of Firefighters (IAFF), Local 230), which represents plaintiffs in the *Sapien* case) had a Memorandum of Agreement (MOA) that expired in 2009, did

not come to any agreement with the City during 2010-2011, but came to an agreement with the City in 2011 to take an approximate ongoing 10% wage reduction. (Exhibit 21) Confidential Employees' Organization (CEO), AFSCME Local 101 (Exhibit 20) and Municipal Employees' Federation (MEF), AFSCME Local No. 101 (represented by plaintiff in the *AFSCME* case) (Exhibit 28) had a closed contract in 2010-2011, but in 2011-2012 the City imposed an approximate 12% wage reduction as part of the City's Last, Best and Final Offer. True and correct copies of these Agreements or Last Best and Final Offers, with authorizing resolutions, are attached as Exhibits 20, 21, and 28.

27. The union agreements to pay additional employee pension contributions contained substantially similar provisions. For example, the 2010-2011 MOA between the City and the Association of Engineers and Architects (AEA Unit 43), of which plaintiff Mukhar is the president, states at Section 10.1.1:

> <u>On-Going Additional Retirement Contributions</u>. Effective June 27, 2010, all employees who are members of the Federated City Employees' Retirement System will make additional retirement contributions in the amount of 7.30% of pensionable compensation, and the amounts so contributed will be applied to **reduce the contributions that the City would otherwise be required to make for the pension unfunded liability**, which is defined as all costs in both the regular retirement fund and the cost-of-living fund, except current service normal costs in those funds. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. **The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.30% of pensionable compensation, as illustrated below** . . . ": [Emphasis added]

In addition, the union agreed to an additional one-time additional pension contribution "in the amount of 3.53% of pensionable compensation, and the amounts so **contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability**...." (Section 10.1.2) [Emphasis added]

28. The unions also agreed to the City amending the Municipal Code to provide for the payment by employees of these "additional contributions." The AEA agreement stated: "The

parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code." (Exh. 11 at Section 10.1.4.) The POA agreement stated: "The parties understand that in order to implement this provision, an amendment must be made to the Police & Fire Department Retirement Plan that requires an ordinance amending the San Jose Municipal Code." (Exh. 29 at p. 3 of POA's Memorandum of Agreement.) See Exhibits 11, 15, 17, 23, 25, and 29.

29. As agreed with the unions, the City amended the Municipal Code provisions for both the Federated Plan and Police and Fire Plans to authorize payment by employees of additional pension contributions and provide that these contributions could be used to offset the City's pension contributions. (See Municipal Code 3.28.775, 3.28.955 [Federated], 3.36.1525 [Police and Fire].)

30. Most of the additional employee contributions and/or wage reductions for fiscal year 2010-2011 equaled approximately 10% of employee total compensation. In the following two fiscal years, 2011-2012 and 2012-2013, the unions that had agreed to the additional employee contributions agreed to take the 10% reduction in total compensation as a straight wage reduction, and other unions agreed to take or continue to take wage reductions. For those unions that did not agree, the City imposed a wage reduction as part of the City's Last, Best and Final Offer. True and correct copies are attached as Exhibits 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 31, and 34.

31. During negotiations over compensation, the City and its employee unions have treated increased employee pension contribution rates as interchangeable with wage decreases. Both are elements that reduce "Total Compensation," which is the total cost to the City of pay and benefits, including base pay, retirement contributions, health insurance, and other benefits. Increased employee pension contributions have some advantages over wages for employees. The deductions are made pre-tax and are credited to the employee's retirement account, which means that if the employee leaves employment with the City, the employee has the option of taking the balance of the retirement account. During the later negotiations, the City received an e-mail from a union representative making these points. A true and correct copy is attached as Exhibit 35.

Employee Contributions Towards Retiree Healthcare

32. Measure B requires that: "Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities." (Section 1512-A: Retiree Healthcare.)

33. Under the Municipal Code, the City's retirement plans subsidize retiree health care premiums for eligible retirees who have 15 or more years of service with the City. The retirement plans pay 100% of the premium for the lowest cost plan, offered by the City, for either single or family coverage. Payments for retiree medical premiums are made from a retirement system medical benefits fund, or a trust fund, which are accounted for separately from the pension funds.

34. In the case of both the Federated and the Police and Fire Retirement Plans, the Municipal Code requires that employees and the City make contributions towards retiree medical benefits on a one to one ratio. (Municipal Code 3.28.385(C); 3.36.575(D).)

35. Contribution rates for retiree healthcare benefits, which are separate from pension contribution rates, are established by the independent retirement boards based on data from the board's actuary. Historically, the contributions from employees and the City did not fully prefund the cost of employee retiree healthcare benefits. In 2007, the City began to address the new GASB reporting standards that required state and local governments to disclose the full cost of "unfunded actuarial liabilities" for "Other Post-Employment Benefits" ("OPEB") such as retiree healthcare.

36. Actuarial studies reported the City's unfunded liability for retiree health care to be as high as $1.65 billion, if it did not prefund the health care costs, and $1.14 billion if it fully prefunded the costs. Attached as Exhibit 36 is a true and correct copy of a Memorandum dated July 24, 2007, from myself and others to Mayor and City Council, regarding "Retiree Healthcare." The memorandum attaches true and correct copies of reports received by the City from two actuaries: Report from Bartel Associates, LLC, re "Retiree Healthcare Plan, June 30, 2007, Federated City Employees"; Letter from Segal Company, dated January 12, 2007, Re Police and Fire Plan GASB Results. True and correct copies of the reports are attached as Exhibits 37 and 38.

37. After receipt of these reports, the City Council directed City staff to begin

negotiations with City unions over contributions towards payment of the full "Annual Required Contribution" ("ARC") - the contribution needed on an annual basis in order to cover the estimated costs of the retiree health care benefit for current and future retirees. The ARC is expressed as both a dollar amount and as a percentage of payroll.

38. Beginning in 2009, the City reached agreement with most City unions for employees and the City to continue paying the cost of retiree healthcare on a one-to-one ratio, and to phase in additional employee and City contributions, in the same ratio, to eventually fully fund the ARC.

39. The City reached agreements with the following unions:

- Association of Building, Mechanical and Electrical Inspectors (ABMEI);
- Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43) (plaintiff Mukhar, lead plaintiff in the *Mukhar* case, is president of the union);
- Association of Maintenance Supervisory Personnel, IFPTE Local 21 (AMSP) (plaintiff Dapp, a plaintiff in the *Mukhar* case, is president of the union);
- City Association of Management Personnel, IFPTE Local 21 (CAMP);
- International Brotherhood of Electrical Workers, Local No. 332 (IBEW);
- Municipal Employees' Federation, AFSCME Local 101 (MEF) (plaintiff in the *AFSCME* case);
- Confidential Employees' Organization, AFSCME Local 101 (CEO);
- San Jose Police Officers' Association (plaintiff in the *SJPOA* case); and
- International Association of Firefighters (IAFF), Local 230 (representative for employee plaintiffs in the *Sapien* case); the agreement with IAFF was reached in 2011 and the City and employees represented by IAFF began to phase in additional retiree healthcare contributions starting in 2011.

True and correct copies of these Agreements and authorizing resolutions with unions are attached as Exhibits 39 (agreement covering ABMEI, AEA, AMSP, CAMP, IBEW, MEF, and CEO), 40 (resolution approving agreement), 41 (resolution and agreement covering POA), and 21 (resolution and agreement covering IAFF).

40. A typical agreement with the Federated unions stated:

> The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). ....The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380(C)(1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. . . . (Exh. 39, AEA, MOA, Section 12.1)

41. The payments of the full ARC were to be phased in incrementally but: "[B]y the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code." (Exh. 39, AEA, MOA, Section 12.3)

42. The unions also agreed that amendments to the Municipal Code in accordance with this agreement were to be made and that "(t)he City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments." (Exh. 39, AEA, MOA, Section 12.2.)

43. This or similar language was agreed to by all Federated unions that are plaintiffs in these consolidated actions or who represent individuals who are plaintiffs in these consolidated actions, with the exception of the Operating Engineers (OE#3), which represents the *Harris* plaintiffs. The City imposed these terms on OE#3 as part of the City's Last, Best and Final Offer. True and correct copies of the Last, Best and Final Offer, and authorizing resolutions, are attached as Exhibits 42 and 43.

44. The SJPOA and IAFF also agreed to pay towards the full ARC, but with some additional provisions. Their respective agreements cap the contribution towards paying the full ARC at 10% of pensionable pay for employees and provide for meet and confer and dispute resolution procedures for amounts over that percentage. True and correct copies of those

Agreements, and authorizing resolutions are attached as Exhibits 41 (POA) and 21 (IAFF).

45. The memoranda from myself and other City employees concerning retiree healthcare benefits and the memoranda concerning or attached to the City's authorizing resolutions, Exhibits 36 thru 43 and 21, were made by and within the scope of the employees' public duties, were made at or near the time of the act, condition or event described in the memoranda, and reflect information from City financial and collective bargaining records.

Supplemental Retiree Benefit Reserve

46. Measure B states, "The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets." (Measure B, § 1511-A.)

47. Under the Municipal Code, the Supplemental Retiree Benefit Reserve ("SRBR") was a feature of both the Federated and Police and Fire retirement plans. The SRBR provided retirees with a so-called "13th check" on top of their other existing pension benefits (a monthly pension; a retirement healthcare premium subsidy; and a 3% yearly COLA.)

48. Employee pension contribution rates to the retirement systems have not included any amounts specifically attributable to the SRBR.

49. Beginning in 2009, the retirement funds began to experience significant increases in unfunded liabilities. The large unfunded liabilities resulted in an anomaly. Although the retirement systems had large unfunded liabilities, they earned enough in a particular year to have "excess earnings" for the year – as defined in the Municipal Code – to fund the SRBR. And under the resolutions that established the methods for distribution to retirees, the SRBR in turn had sufficient funds to make supplemental distributions to retirees.

50. Attached as Exhibit 44 is a true and correct copy of a Memorandum dated October 22, 2010, from Debra Figone, City Manager to Honorable Mayor and City Council re "Suspension of SRBR Payments."

51. Attached as Exhibit 45 is a true and correct copy of a Memorandum dated May 13, 2011 from Debra Figone, City Manager to Honorable Mayor and City Council re "Continued

Suspension of SRBR Payments."

52. Attached as Exhibits 46 thru 48 are true and correct copies of a Memorandum dated April 9, 2012, from Debra Figone, City Manager to Honorable Mayor and City Council re "Suspension of SRBR Payments" at pp. 4-5 (Exhibit 46); Letter dated January 13, 2012 from Cheiron re Federated Plan Supplemental Retiree Benefit Reserve as of June 30, 2011 (Exhibit 47); Letter dated March 29, 2012 from Cheiron re Police and Fire Retirement Plan Supplemental Retiree Benefit Reserve as of June 30, 2011. (Exhibit 48)

53. In the memoranda to the City Council, the City Manager recommended suspension of SRBR distributions due to "the plans' significant unfunded liabilities." The memoranda attached as Exhibits 44 thru 48 were made by and within the scope of the employees' public duties, were made at or near the time of the act, condition or event described in the memoranda, and contain information obtained from City financial records.

54. Beginning in 2010, City Council enacted resolutions to suspend distribution of Federated SRBR funds for the fiscal years 2010-2011, 2011-2012, and 2012-2013. Beginning in 2010, the Council enacted ordinances to suspend distribution of Police and Fire Plan SRBR funds for the same fiscal years.

55. In 2011, a number of City unions either made proposals or entered into tentative agreements for the elimination of the SRBR in part or in whole. Attached as Exhibits 49 thru 53 Tentative Agreements with ABMEI (Exhibit 49), IBEW (Exhibit 50), OE#3 (Exhibit 51), CEO (Exhibit 52), and MEF (Exhibit 53), to eliminate SRBR completely.

56. After the enactment of Measure B, the City Council enacted Ordinance Number 29174 amending the Municipal Code to terminate the Federated SRBR and return its funds to the general retirement fund. The ordinance became effective on January 4, 2013. A true and correct copy of the Ordinance is attached as Exhibit 54. The City Council also enacted an ordinance amending the Municipal Code to terminate the Police and Fire SRBR and return its funds to the general retirement fund. The ordinance was enacted on January 29, 2013, and will become effective on March 1, 2013. A true and correct copy of this ordinance is attached as Exhibit 55.

Retirement System Actuarial Reports

57. The two City retirement systems, and sometimes the City itself, obtain actuarial reports concerning retirement system funds, liabilities and contribution rates to the systems for the City and employees. Attached as Exhibits 56 thru 61 are true and correct copies of the following reports received from system actuaries.

Cheiron, February 8, 2012, Letter to Board of Administration re 5-Year Budget Projections for Federated. [Exhibit 56]

Cheiron, February 21, 2012, Letter to Director of Retirement Services, Police & Fire Department Retirement Plan re 5-Year Budget Projections for Police & Fire. [Exhibit 57]

Cheiron, December 2012, Federated City Employees' Retirement System, June 30, 2012 Actuarial Valuation. [Exhibit 58]

Cheiron, December 2012, City of San Jose Police and Fire Department Retirement Plan, June 30, 2012 Actuarial Valuation. [Exhibit 59]

Cheiron, January 17, 2013, San Jose Federated City Employees' Retirement System, June 30, 2012 OPEB Actuarial Valuation Results. [Exhibit 60]

Cheiron, February 7, 2013, City of San Jose Police and Fire Department Retirement System, June 30, 2012 OPEB Actuarial Valuation Results. [Exhibit 61]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I executed this declaration on February 7th, 2013 in San Jose, California.

Alex Gurza

2046124.1

TABLE OF CONTENTS OF EXHIBITS TO DECLARATION OF ALEX GURZA

EXH. NO.	DESCRIPTION
	VOLUME 1
1	City Auditor's Report, "Pension Sustainability: Rising Pension Costs Threaten The City's Ability To Maintain Service Levels – Alternatives For A Sustainable Future" – September 2010
2	Coalition of Union proposal offered to City – June 18, 2010 (4:25 p.m.)
3	OE#3 Union Proposals to City to pay increased employee contribution rate
4	IBEW Union Proposal to City to pay increased employee contribution rate – May 14, 2010
5	SJ POA Union Proposals to City to pay increased employee contribution rate – May 17, 2010 and June 21, 2010
6	IAFF Letter and Proposal to City to pay increased employee contribution rate – June 9, 2010
7	Coalition of Unions agreement to make additional pension contributions – June 17, 2010
8	Transcript of Christopher Platten's comments to City Council – June 17, 2010
	VOLUME 2
9	Association of Building, Mechanical and Electrical Inspectors (ABMEI) – Resolution No. 75362 approving and terms of Last, Best and Final Offer, effective June 27, 2010
10	ABMEI – Resolution No. 75810 approving and terms of MOA (7/1/11 – 6/30/13)
11	Association of Engineers and Architects (AEA) – Resolution No. 75451 approving and terms of MOA (7/1/10 – 6/30/11)
12	AEA – Resolution No. 75777 approving and terms of MOA (7/1/11 – 6/30/13)
13	Association of Legal Professionals (ALP) – Resolution No. 75419 approving and terms of Agreement (7/1/10 – 6/30/11)
14	ALP – Resolution No. 75813 approving and terms of Agreement (7/1/11 – 6/30/12)
15	Association of Maintenance Supervisory Personnel (AMSP) – Resolution No. 75452 approving and terms of Agreement (7/1/10 – 6/30/11)

16	AMSP – Resolution No. 75778 approving and terms of Agreement (7/1/11 – 6/30/13)
17	City Association of Management Personnel (CAMP) – Resolution No. 75449 approving and terms of Agreement (7/1/10 – 6/30/11)
18	CAMP – Resolution No. 75779 approving and terms of Agreement (7/1/11 – 6/30/13)
19	Confidential Employees' Organization (CEO), AFSCME Local 101 – Resolution No. 74635 approving and terms of MOA (9/21/08 – 9/17/11)
20	CEO – Resolution No. 75815 approving and terms of Last, Best and Final Offer (9/18/11 – 9/15/12)
21	International Association of Firefighters (IAFF) – Resolution No. 75762 approving and terms of Agreement (7/1/09 – 6/30/13)
22	IAFF – Resolution No. 75762 approving and terms of Agreement (7/1/09 – 6/30/13)
23	International Brotherhood of Electrical Workers, Local 332 (IBEW) – Resolution No. 75450 approving and terms of Agreement (7/1/10 – 6/30/11)
24	IBEW – Resolution No. 75811 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12)
25	Operating Engineers, Local No. 3 (OE#3) – Resolution No. 75453 approving and terms of Agreement (7/1/10 – 6/30/11)
26	OE#3 – Resolution No. 75812 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12)
27	Municipal Employees' Federation (MEF), AFSCME Local 101 – Resolution No. 74525 approving and terms of MOA (7/1/08 – 6/30/11)
28	MEF – Resolution No. 75814 approving and terms of Last, Best and Final Offer (7/1/11 – 6/30/12)
29	San Jose Police Officers' Association (SJPOA) – Resolution No. 75507 approving and terms of MOA (7/1/10 – 6/30/11)
30	SJPOA – Resolution No. 75846 approving and terms of Agreement (7/1/11 – 6/30/12)
31	SJPOA – Resolution No. 76118 approving and terms of Agreement (7/1/11 – 6/30/13)
32	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75363 approving Resolution for 4.75% salary reduction, effective June 27, 2010.

33	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75436 approving Resolution for 5.4% salary reduction, effective June 27, 2010.
34	Executive Management and Professional Employees (Unit 99) and Other Unclassified Non-Management Employees (Units 81 and 82) – Resolution No. 75780 approving Agreement for 4.75% and 5.4% salary reductions, effective June 26, 2011.
	VOLUME 3
35	E-mail from union representative Nancy Ostrowski (IPFTE Local 21) – March 7, 2011
36	Memorandum from Alex Gurza to Mayor and City Council re "Retiree Healthcare" – July 24, 2007
37	Report from Bartel Associates, LLC, re "Retiree Healthcare Plan, June 30, 2007 Actuarial Valuation, Federated City Employees"
38	Letter from Segal Company re "City of San Jose Police and Fire Department Medical and Dental Insurance Plan, GASB Statements No. 43 and No. 45 Results Using Requested Assumptions" – January 12, 2007
39	Memorandum from Alex Gurza to Mayor and City Council dated April 7, 2009 re Agreements covering ABMEI, AEA, AMSP, CAMP, IBEW, MEF, and CEO re Retiree Healthcare Funding
40	Resolution No. 74882 approving Agreements between City and ABMEI, AEA, AMSP, CAMP, IBEW, MEF, and CEO re Retiree Healthcare Funding
41	Resolution No. 74803 approving and terms of Agreement between City and SJPOA re Retiree Healthcare Funding
42	Last, Best and Final Offer from City to OE#3 – June 1, 2009
43	Resolution No. 74988 approving Last, Best and Final Offer from City to OE#3, effective June 28, 2009
44	Memorandum from Debra Figone to Mayor and City Council re "Suspension of SRBR Payments" – October 22, 2010
45	Memorandum from Debra Figone to Mayor and City Council re "Continued Suspension of SRBR Payments" – May 13, 2011
46	Memorandum from Debra Figone to Mayor and City Council re "Suspension of SRBR Payments" – April 9, 2012
47	Letter from Cheiron re "Federated Employees Retirement Plan, Supplemental Retiree Benefit Reserve as of June 30, 2011" - January 13, 2012

48	Letter from Cheiron re "City of San Jose Police and Fire Department Retirement Plan, Supplemental Retiree Benefit Reserve as of June 30, 2011" - March 29, 2012
49	Tentative Agreement with ABMEI re SRBR
50	Tentative Agreement with IBEW re SRBR
51	Tentative Agreement with OE#3 re SRBR
52	Tentative Agreement with CEO re SRBR
53	Tentative Agreement with MEF re SRBR
54	Ordinance No. 29174 amending the Municipal Code to terminate the Federated SRBR and return its funds to the general retirement fund, effective January 4, 2013
55	Ordinance amending the Municipal Code to terminate the Police and Fire SRBR and return its funds to the general retirement fund, enacted on January 29, 2013, and to become effective on March 1, 2013
56	Cheiron Letter to Board of Administration re 5-Year Budget Projections for Federated - February 8, 2012
57	Cheiron Letter to Director of Retirement Services, Police & Fire Department Retirement Plan re 5-Year Budget Projections for Police & Fire - February 21, 2012
58	Cheiron's Actuarial Valuation re Federated City Employees' Retirement System, June 30, 2012 - December 2012
59	Cheiron's Actuarial Valuation re City of San Jose Police and Fire Department Retirement Plan, June 30, 2012 - December 2012
60	Cheiron's OPEB Actuarial Valuation Results re San Jose Federated City Employees' Retirement System, June 30, 2012 - January 17, 2013
61	Cheiron's OPEB Actuarial Valuation Results re City of San Jose Police and Fire Department Retirement System, June 30, 2012 - February 7, 2013

EXHIBIT 35

Mercado, Marco

From: Nancy Ostrowski [nostrowski@ifpte21.org]
Sent: Monday, March 07, 2011 5:52 PM
To: Rodriguez, Aracely; Donnelly, Gina; Suggs, Allison; Mercado, Marco; Sammeta, Vijay; Horwedel, Joseph
Cc: Mukhar, John; Servin, Henry; Butcher, Dianna; MacKenzie, Cay Denise; Capaldo, Kara; Dawkins-Thames Phyllis; Dapp, Dale; Phyllis Schulz; rossbayer@sbcglobal.net; DRodriguez@ibew332.org; frankcrusco@sbcglobal.net; stenderman@att.net
Subject: Coalition Negotiations - Answers to the City's Questions
Importance: High

Aracely,

On behalf of our Coalition, please find our answers to your 2 questions below.

1) Why do the coalition teams prefer to make additional retirement contributions to offset the City's contributions and a base pay reduction as a means of achieving a 10% ongoing reduction in total compensation?

The additional retirement contribution provides two forms of relief for our membership. First, the additional retirement contribution is pre-tax and this additional contribution lowers the tax burden for our members but still allows for the city to extract the full 10% total compensation reduction as directed by the City Council. Second, with the uncertainty as to what other bargaining units may or may not concede in total compensation the specter of layoffs for our members is very real. As such, the additional employee retirement contribution that offsets the required city contribution is credited to each individual employee and upon separation from the city that contribution would leave with the employee.

2) Can you please explain the intent of the following language excerpted from the Pension Reform Proposal for New Hires Second Tier Retirement (Plan 2), "The retiree medical benefit will be defined as the minimum plan amount paid to active members at the time the employee retires without future increases." In other words, what retiree healthcare benefit would employees in the 2nd tier receive?

Under our pension reform proposal, new hires would pay the same percentage for health care that was in place for that employee on the last day of employment. For instance, if our proposal was adopted, a new hire that retires would pay 15% of the premium and the increased co-pays, as per our proposal.

We look forward to seeing you at our next session on Wednesday.

Thank you,
Nancy

Nancy Jane Ostrowski
Senior Representative
IFPTE Local 21 - South Bay Office
408.291.2200
Fax 408.291.2203

EXHIBIT 36

COUNCIL AGENDA: 08/07/07
ITEM: 3.11

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Alex Gurza
Mark Danaj
Scott P. Johnson

SUBJECT: RETIREE HEALTHCARE

DATE: July 24, 2007

Approved

Date 7/24/07

COUNCIL DISTRICT: N/A
SNI AREA: N/A

RECOMMENDATION

It is recommended that the City Council:

1) Accept the report on retiree healthcare

2) Direct staff to develop options to achieve full pre-funding of the retiree healthcare liability

3) Direct staff to develop options to reduce the retiree healthcare liability

OUTCOME

Provide information and background on the government accounting rules related to retiree healthcare, provide information on the retiree healthcare liability, and explore options to be considered to mitigate these costs.

EXECUTIVE SUMMARY

The Governmental Accounting Standards Board (GASB) recently implemented reporting standards that require state and local governmental agencies to disclose the full cost of unfunded actuarial accrued liabilities for Other Post Employment Benefits (OPEB), such as retiree healthcare, which include medical and dental benefits. The estimated unfunded retiree healthcare liability for the City of San Jose is currently estimated to be as high as **$1.65 billion** based on the most recent actuarial analyses. Factors that contribute to the amount of the liability include the level of the retiree medical benefit, escalating costs in medical premiums, the increasing number of retirees, and the City's current level of funding retiree healthcare benefits. It is critical that the City, in partnership with employees, retirees, the retirement boards and union representatives, take prudent measures to address the liability; otherwise this liability will be even more costly in the future.

BACKGROUND

The Government Accounting Standards Board (GASB) has two accounting statements, 43 and 45, which require state and local government entities to disclose the full cost of "Other Post-Employment Benefits" (OPEB). Although OPEB's include benefits such as post-employment life insurance plans, disability, and long-term care, retiree healthcare benefits account for the majority of the unfunded OPEB's facing public employers today. These new reporting requirements include identifying the unfunded actuarial accrued liabilities for such benefits and disclosing the amounts in the agency's annual financial statements, similar to pension disclosures.

Implementation of GASB 43 required the City's two retirement plans to convert to the new standard of reporting in the 2006-2007 fiscal year. GASB 45 requires the City to conform to the new standards in fiscal year 2007-2008.

Although GASB 45 does not mandate the pre-funding of OPEB liabilities, the ongoing failure to fully pre-fund these benefits may have a detrimental impact on an agency's long-term financial health and may adversely impact the agency's credit rating. Public entities, including the City of San José, must calculate the liability, decide whether and how to fund the liability, and make decisions about current and future benefits.

ANALYSIS AND COST IMPLICATIONS

RETIREE HEALTHCARE FUNDING METHODOLOGIES

Retiree healthcare benefits are paid in three primary ways:

1. "Pay-as-you-go"

   The "pay-as-you-go" method is the way most agencies have paid for retiree healthcare. The current year's medical insurance premiums for eligible retirees are paid from current revenues. In this method, only the current annual premiums are paid and there are no funds set aside while the employee is working in order to ensure that funds will be available when the employee retires. From an actuarial perspective, this means that the benefit is considered 100% unfunded since no funds have been set aside to cover future benefit costs.

2. Full Pre-Funding

   Full Pre-Funding requires setting aside the amount of money estimated to pay the long-term costs to provide retiree medical insurance. This is the estimate that is required to be calculated pursuant to GASB 43/45 and is similar to the estimates developed to fund the pension benefit.

The full pre-funding strategy is consistent with the principle that the cost of benefits should be paid for as they accrue. In addition, by setting aside sufficient funds to pay for future benefits, the interest earned, and any other return on investments can serve to reduce the ultimate cost to the City of providing the benefits in the future. This is the same strategy used to fund the pension benefit.

3. **Partial Pre-Funding**

In Partial Pre-Funding, some funds are being set aside to pay for future healthcare liabilities, but at a level less than Full Pre-Funding.

CITY OF SAN JOSE'S CURRENT FUNDING OF RETIREE HEALTHCARE

The level and eligibility for retiree healthcare benefits for City employees are defined in the Municipal Code. Contributions from both the City and current employees provide the funding for these benefits. The contributions are made as a percentage of pay for current employees and are part of the contribution rates for the City's two retirement plans. Currently, contributions for retiree dental benefits are made by the City and the employees in the ratio of eight-to-three. Contributions for retiree medical benefits are made by the City and the employees in the ratio of one-to-one (50/50 split).

Currently, the retiree healthcare portions of the contribution rates for the City's two retirement plans are as follows:

Current Retiree Healthcare Funding		
	Employee Contribution	City Contribution
Federated	3.32%	3.82%
Police & Fire	3.78%	4.19%

Note: Calculated as a percentage of pay for current employees.

This method of funding retiree healthcare is unusual in that most agencies in California are part of the California Public Employees' Retirement System (CalPERS) and do not fund retiree healthcare as part of their retirement contribution rate.

Pursuant to the provisions of the Municipal Code, the contributions made to pay for retiree healthcare are maintained in a Medical Benefits Account established for each of the City's retirement plans as a separate account within each retirement fund. However, pursuant to the Internal Revenue Code, the maximum amount that can be contributed to the Medical Benefits Account must not exceed twenty-five (25%) of the total contributions made to the System (other than contributions to fund prior service).

The City's current funding is not "Full Pre-Funding" as discussed above and can be described as partially funded. The amount currently contributed by the City and employees is actuarially determined based on 15 year cash flow projections for the Federated City Employees' Retirement System and 10 year cash flow projections for the Police and Fire Department Retirement Plan.

Please note that the contribution rates above are only representative of the current funding for retiree healthcare and do not include the contributions for the pension benefit. The current contribution rates for the pension benefit (including the amounts listed above for retiree healthcare) are as follows:

Current Retirement Funding (including healthcare)		
	Employee Contribution	City Contribution
Federated	7.58%	21.98%
Fire	11.26%	25.61%
Police	11.67%	28.90%

Based on these contribution rates, in Fiscal Year 2007-2008 the City will contribute a total of approximately $136 million into the retirement funds for the pension benefit and the current level of contributions towards retiree healthcare.

ACTUARIAL STUDIES OF RETIREE HEALTHCARE LIABILITIES PURSUANT TO GASB 43/45

In order to determine the retiree healthcare liability pursuant to GASB 43/45, an actuary must perform a study. These studies produce various estimates.

Two of the key estimates resulting from an actuarial study are the following:

Unfunded Actuarial Accrued Liability (UAAL)
When an actuary develops an estimate of the retiree healthcare liability pursuant to GASB 43/45, the actuary estimates the Actuarial Accrued Liability. The Actuarial Accrued Liability is the estimated total long-term liability to provide the retiree healthcare for current retirees as well as the estimated costs of providing these benefits to current employees when they retire. After taking into account any existing assets that have been set aside to pay these benefits, the actuary estimates the total Unfunded Actuarial Accrued Liability, or UAAL.

Before the focus on retiree healthcare resulting from the requirements of GASB 43/45, unfunded liabilities have been discussed primarily related to pension benefits. According to the State of California's Legislative Analyst's Office, the average public pension system in California has sufficient assets to cover approximately 88 percent of the estimated liabilities for future pension benefits, resulting in an unfunded liability equal to approximately 12 percent of these liabilities.[1] In the "Pay-as-you-go" method used by most agencies to pay for retiree healthcare, **100%** of the liability is an **unfunded** liability, and therefore the liability is considered to be 0% funded. As a comparison, based on the current partial funding, the funding ratio for retiree healthcare benefits in the Police and Fire Department Retirement Plan is 5% and 10% in the Federated City Employees' Retirement System.

Annual Required Contribution (ARC)
In addition to calculating the long-term liability, an actuary also calculates the amount of money that would need to be contributed on an annual basis in order to cover the estimated costs of the retiree healthcare benefit for current and future retirees. This is referred to as the Annual Required Contribution, or ARC. The amount of the ARC is the normal cost for the benefits earned in the current year plus an amortized portion of the total Unfunded Actuarial Accrued Liability. The ARC is calculated as a percentage of payroll, which translates to a specific annual dollar amount.

Calculating the ARC is similar to the method used to calculate pension benefits, which results in contribution rates paid into the retirement system to ensure that sufficient funds are available to pay the benefits. Although GASB does not require agencies to fund the liability and make the Annual Required Contribution, a decision whether or not to develop a strategy to address the retiree healthcare liability should be considered similar to the decision regarding funding the pension benefit. Both are significant long-term liabilities.

Assumptions
An actuary who performs retiree healthcare studies uses various assumptions in developing the estimated liability. Certain assumptions will have a significant effect on the estimated liability. One of the key assumptions is the estimated investment return or "discount rate." In order to be able to use a higher discount rate assumption, such as 8%, the agency must be contributing the full Annual Required Contribution (Full Pre-Funding) and invest those funds in a pool of investments that are estimated to produce the higher estimated rate of return. If an agency is not contributing the full ARC (such as agencies that use a "pay-as-you-go" method), a lower discount rate assumption must be used, which significantly increases the total estimated liability.

Other assumptions used by an actuary, such as estimated future increases in the cost of medical insurance and the actuarial cost method, will have an effect on the estimated liability.

THE CITY OF SAN JOSE'S RETIREE HEALTHCARE LIABILITY

The Police and Fire Department Retirement Plan Board and the Federated Employees' Retirement System Board retain their own actuaries who each conduct actuarial studies. At the Boards' requests, each actuary completed a study of the retiree healthcare liability. The most recent reports estimating the liability of the retiree healthcare benefits produced by the Police and Fire Department Retirement Plan's actuary, The Segal Company (Segal),

[1] As of July 1, 2005, the funding ratio for the pension benefits in the Police and Fire Department Retirement Plan was 97.81% and 81% for the pension benefits in the Federated City Employees' Retirement System.

and the Federated City Employees' Retirement System's actuary, Gabriel Roeder Smith & Company (GRS) are attached.

In addition to the actuaries retained by each Retirement Board, the City has retained an actuary, Bartel Associates (Bartel), to assist in exploring alternatives to move towards pre-funding the retiree healthcare liability and/or to reduce the retiree healthcare liability. In order to assist the City in exploring options, Bartel performed its own analysis of the retiree healthcare liability for employees and retirees covered by the Federated City Employees' Retirement System. Bartel's analysis (attached) resulted in an estimate of the liability that is higher than the estimates contained in the GRS report. The primary reasons for Bartel's higher estimated liability include the time value of money (GRS report of 2006 versus the Bartel report of 2007) and different economic and other assumptions.

The various estimates provided by Segal, GRS and Bartel can be found in the attached reports. However, for the purposes of this memorandum, the estimated liability uses those produced by Segal and Bartel. Based on those reports, the following is a summary of the City's retiree healthcare liability:

RETIREE HEALTHCARE LIABILITY[2]				
	Current Partial Funding		Full Pre-Funding	
	P&F	Federated	P&F	Federated
Discount Rate (Rate of Return)	5.30%	5.55%	8.0%	7.75%
Unfunded Accrued Actuarial Liability (UAAL)	$812.8M	$837.8M	$550.4M	$584.7M
Total UAAL	$1.65 Billion		$1.14 Billion	
Funded Status (ratio of assets to AAL)	5%	10%	7%	14%
Annual Required Contribution (ARC)[3]	$68.1M	$66.3M	$49.5M	$51.8M
Total ARC	$134.4 Million		$101.3 Million	

[2] Estimates are based upon the Entry Age Normal (EAN) actuarial cost method.
[3] The amounts listed are the total annual required contributions including contributions made by the City and employees.

Based on these estimates, the total Unfunded Accrued Actuarial Liability (UAAL) for retiree healthcare is as high as $1.65 billion. If the City and employees fully pre-fund the liability, the higher discount rate can be used because the money can be invested and can earn a long-term higher rate of return. This reduces the estimated liability from $1.65 billion to $1.14 billion. However, this requires making an Annual Required Contribution of $101.3 million.

A variety of factors contribute to the high cost of providing retiree healthcare benefits. These include the dramatic increase in the cost of healthcare, the number of years that retirees receive the benefits and an increasing number of retirees due to the retirement of "baby boomers." For example, in the next five years, approximately one-third of City employees will be eligible to retire.

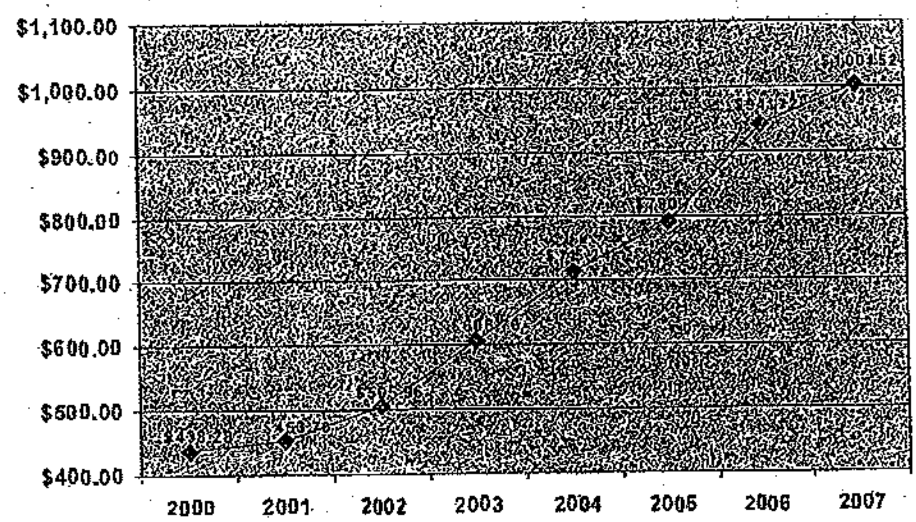
It should be noted that the above costs do not include the cost to fund the pension obligation and only include the retiree healthcare liability. Apart from the issue of the cost of retiree healthcare, the City's retirement contribution rates have been increasing. In 2000, the City's contribution rate was 16.09% of pensionable compensation for the Federated City Employees' Retirement System and 15.70% for the Police and Fire Department Retirement Plan. Currently, the City's contribution rates are 21.98% for Federated, 28.90% for Police and 25.61% for Fire. This represents an increase of approximately 37%, 84%, and 63%, respectively. (Retirement benefit increases for sworn Fire personnel are subject to the pending arbitration, and the contribution rates may increase.)

CURRENT RETIREE HEALTHCARE BENEFITS

The level and eligibility for retiree healthcare benefits are contained in the San José Municipal Code as part of the retirement plans. Generally, employees are eligible for retiree medical insurance coverage at fifteen (15) years of service. Even employees with 15 years of service in the Federated City Employees' Retirement System and 20 years of service in the Police and Fire Department Retirement Plan who leave City service prior to retirement can qualify for lifetime retiree medical insurance upon retirement.

For eligible retirees, the benefit provides for 100% of the premium cost for the lowest priced plan available to active employees for either single or family coverage. (This is a higher level of benefit than active employees receive.) Since the current benefit is tied to the cost of the premium rather than a fixed-dollar amount, the long-term costs of providing this benefit is integrally tied to the rising cost of healthcare, which is both a local and a national issue. For example, the current monthly cost for Kaiser family coverage is $1,001.52. As the chart below indicates, only seven years earlier, the monthly cost for family coverage was $438.28. This is an increase of 129%. During the same period, the Consumer Price Index (CPI) in the Bay Area increased by only 21.06%.

**Kaiser Family Monthly Rates
2000-2007**



In addition to medical insurance, generally employees in the Federated City Employees' Retirement System who have five (5) years of service and retire directly from active City service are eligible to receive dental benefits. In the Police and Fire Department Retirement Plan, employees with 15 years of service (or 20 years of service for those who leave City service prior to retirement) can qualify for lifetime retiree dental insurance upon retirement. The plans provide 100% of the premium cost for this benefit.

RETIREE HEALTHCARE BENEFIT COMPARISON

Since all public agencies are required to comply with GASB 43/45 in the reporting of retiree healthcare liabilities, it is understandable to conclude that all agencies face similar challenges. However, this is not the case. Of course, the liability will vary according to the size of the agency and the resulting number of retirees eligible for retiree healthcare. However, a variable that significantly affects the size of the liability is the differences in the level of retiree healthcare benefits provided by different public agencies.

City staff compared the healthcare benefit provided to retirees of cities and counties serving populations of 100,000 or more in Santa Clara County, Alameda County, San Mateo County, San Francisco City and County, and Contra Costa County. (These are the same agencies used for other comparative purposes.) In evaluating the retiree healthcare benefit provided by these cities and counties, it was found that the majority of the surveyed agencies either contribute a fixed dollar amount or use a formula to determine their contribution toward retiree medical premiums, which generally results in a lower employer contribution towards retiree healthcare benefits.

In some agencies, the retiree healthcare benefit varies by employee group. The following is a comparison of the maximum 2007 monthly contributions for retiree healthcare premiums provided to retirees of the largest non-public safety employee group in each of the comparable agencies. The amounts were calculated for a retiree with 15 or 30 years of service.

Agency[4]	15 Years	30 Years
Oakland	$80.80	$80.80
Fremont	$170.00	$170.00
Hayward	$226.01	$228.01
Santa Clara (City)	$284.00	$284.00
Daly City	$404.66	$465.00
Santa Clara County	$418.81	$418.81
Alameda County	$341.54	$455.38
Sunnyvale	$492.53	$492.53
Berkeley	$444.73	$494.14
San Jose	**$1,001.52**	**$1,001.52**
Contra Costa County	$1,102.59	$1,102.59
Concord	$1,121.04	$1,121.04
San Francisco	$1,149.03	$1,149.03

While the City of San Jose's benefit is currently tied to 100% of the cost of single or family coverage, the majority of the agencies tie the retiree healthcare contribution to a fixed dollar amount or to a formula which is more or less equivalent to a single coverage premium. Since family coverage is currently $1,001.52 per month compared to $402.22 for single coverage, the City's benefit is significantly richer and its costs contribute significantly to the retiree healthcare liability.

The long-term costs of any retiree healthcare benefit that is tied to the cost of a premium will be significantly affected by the increases in healthcare costs as compared to benefits that are based on a formula or a fixed dollar amount.

STEPS TAKEN BY OTHER CALIFORNIA AGENCIES TO ADDRESS RETIREE HEALTHCARE LIABILITIES

The long-term liability for retiree healthcare benefits will have a significant impact on government agencies. The Civil Grand Juries in both Marin County and Contra Costa County recently issued reports specifically on retiree healthcare benefits. The Contra Costa Civil Grand Jury report states that escalating retiree healthcare benefit costs are

[4] San Mateo County is not included above because they do not provide a lifetime contribution towards retiree medical premiums. Retirees may use their unused, accrued sick leave balances to receive a certain level of retiree healthcare contributions. Upon exhaustion of the sick leave balance, the agency provides no further contribution toward retiree healthcare.

threatening the County's financial condition and with it the ability to deliver essential services. The Marin County Civil Grand Jury report states that the County cannot afford to pay the liability without drastic changes in its priorities, including raising taxes and/or reducing services.

Cities and counties across California are beginning to take steps to address and mitigate the costs associated with unfunded retiree healthcare benefits. Employers who have been using a "pay-as-you-go" approach are coming to the realization that this funding methodology is no longer sustainable considering the estimated long-term liabilities of providing retiree healthcare benefits.

The City of San José, as well as agencies throughout California, must find solutions to address the significant unfunded liability of retiree healthcare benefits. The following are brief descriptions of the approaches taken and challenges facing several California agencies.

Contra Costa County

Contra Costa County's retiree healthcare liability is estimated to be $2.6 billion. An outside consultant advised the County to set aside $216 million annually for the next 30 years to reduce their liability. The County's Board of Supervisors approved a fiscal year 2007-2008 budget which provides $33 million for retiree healthcare, compared to the $216 million estimated annual required contribution. The County continues to work on strategies to fund the obligation in future years.

City of Fremont

The City of Fremont provides a maximum monthly reimbursement for retiree healthcare, and the amount varies by employee group. For example, one union contract provides retirees with a flat rate of $200 per month as a retiree medical reimbursement. In recent negotiations with this group, the benefit was reduced for employees hired after July 1, 2006, and the monthly maximum now varies from $0 to $200. (Only retirees with 20 or more years of service are eligible for the monthly maximum reimbursement of $200.) This flat rate method does not increase with the cost of healthcare.

San Diego County

San Diego County initially approved a plan to cut off health benefits for employees who retired after March 2002 to reduce its unfunded healthcare liability. As a compromise, recent retirees receive an additional $400 a month in pension payments to help pay for medical insurance which is paid from reserves. The County would like to create a trust to continue to make the monthly payments to retirees instead of using reserves. However, negotiations over the development of the trust have not yet resulted in agreements. Several County and union officials expect that this issue may go unresolved until the expiration of the current union contracts.

Orange County

Orange County's unfunded liability was recently estimated at $1.4 billion. The County was able to significantly reduce its unfunded liability by making several significant changes in negotiations with employee groups. The bulk of the savings came from medical program changes such as establishing a medical trust to manage and invest County and employee contributions and moving retirees into their own health insurance pool, separate from active employees. Capping the annual increases of the amount contributed towards retiree healthcare to 3% is also expected to result in significant savings.

Orange County has taken other actions such as reducing medical grant payments by 50% once a retiree becomes Medicare eligible, reducing insurance payments for workers retiring before age 60 and raising insurance payments for those over age 60, and freezing lump sum severance benefits at current levels for those employees leaving County employment. All of these actions combined have worked to significantly reduce Orange County's unfunded liability.

City and County of San Francisco

From 2001 to 2006, San Francisco's annual costs for retiree healthcare more than quadrupled from $23 million to $101 million. In an effort to reduce San Francisco's unfunded retiree healthcare liability, San Francisco created a new Retiree Health Benefits Fund and has included $500,000 in this fund as part of the Fiscal Year 2007-2008 budget. However, this is a very small amount compared to the estimated $4.9 billion unfunded liability.

San Francisco is currently looking at other ways it can reduce its unfunded liablity. The City of San Francisco is exploring the model used for its pension plan, which uses a combination of City and employee contributions to fund the system.

PRIMARY OPTIONS

The two general strategies identified to address the healthcare liability, as well as demonstrated by the actions taken by other agencies, are pre-funding the cost of future healthcare benefits and making changes to the retiree healthcare benefits themselves in order to reduce the total liability. Within both of these strategies, there are several options.

Pre-funding

As stated earlier in this memorandum, the full funding strategy is consistent with the principle that benefit costs should be paid for as they accrue. In addition, by setting aside sufficient funds to pay for future benefits combined with the higher rate of return on investments of those funds, it can serve to reduce the long-term cost of providing future benefits for current City employees. This is the same strategy used to fund the pension benefit.

Many agencies are considering the implementation of Trust Accounts to allocate monies for pre-funding retiree healthcare liabilities. Currently, employees and the City contribute to a Medical Benefits Account that is a separate account in each of the retirement funds. Because of the IRS limitation on maximum contributions into the Medical Benefits Account, if the City and employees were to fully pre-fund the liability by making the Annual Required Contribution, a separate Trust would need to be established.

However, full pre-funding of the current retiree healthcare benefit is very expensive for both the City and employees. As described above, full pre-funding requires the City and employees to contribute the Annual Required Contribution of $101.3 million per year. This amount is *in addition* to the contributions required to fund the pension benefits.

Partial pre-funding to phase into full pre-funding over time is a less costly option up front, but may result in increased long-term costs. Absent any investment returns that may have been earned by full pre-funding now, the City and employees would be required to pay what would otherwise be offset by those returns in future years. Any portion of the liability that is unfunded must be disclosed by the City as a debt and any portion of the annual contributions that are not funded must be recorded on the City's financial statements which may have an adverse impact on the overall financial stability of the City.

The cost of full or partial pre-funding will require the City and employees to make many difficult choices. The City will have to explore both revenue increases and diverting funds from existing programs and services to begin funding its portion of the liability.[5]

Benefit Changes

As noted on the comparative chart presented earlier in this report, the current benefits provided to City of San José retirees are among the richest provided relative to comparable agencies. Changes to current benefits that result in a reduction in cost would in turn reduce the overall liability.

Many options exist regarding potential changes to the current benefits that would result in a reduction in liability. Some of the changes implemented by other agencies include healthcare plan design changes, adjustments to eligibility criteria and the elimination of the "implicit subsidy" resulting from combining both active employee and retiree populations in healthcare rates.

The affected population can be divided into three general segments:

1. Current retirees
2. Current employees
3. Future employees

[5] In fiscal year 2007-2008, $2 million was set aside for this purpose. However, these are one-time funds.

While changes in benefits could be applied to only selected segments of the affected population and not to others, this limits any possible reduction in the current total liability.

Approximately 50% of the liability is attributable to the cost of the benefits for current retirees. However, there are legal issues involved in changing benefits for current retirees and changing benefits for current retirees may be subject to legal challenge.

If benefits are unchanged for current retirees, this leaves options to changes in the benefits for current and future employees only. Drastic reductions or even the elimination of healthcare benefits for future employees with no change in benefits for current employees would yield virtually no decrease in the liability for many years. This is because the estimated unfunded liability primarily consists of the costs to provide benefits to current retirees and current eligible employees when they retire.

It is important to note that any changes to the benefits for current and future employees is subject to the meet-and-confer negotiation process between the City and the bargaining groups representing the affected employees. Additionally, there are also legal issues with regard to changing benefits for current employees which require review.

It is recognized that both pre-funding and benefit changes are extremely sensitive and difficult choices impacting the City, its employees and the community. However, the longer there is a delay in addressing the liability, the more costly and difficult those choices will become in the future.

Health-Risk Management (Wellness)

While pre-funding and benefit changes are the primary approaches to managing the retiree healthcare liability, it is important to note that wellness initiatives are important complementary measures. In pursuing these, organizations can potentially reduce the rate of increase of healthcare premiums by providing employees and retirees with programs that assist individuals in addressing the health risks and chronic diseases that drive large premium increases (such as hypertension, heart disease, obesity, and diabetes). The City has already begun conversations with stakeholders and plans to roll-out a health-risk management program before the end of this fiscal year.

CONCLUSION

GASB Statements 43 and 45 now require public agencies to report the long-term liability for retiree healthcare and to record any portion of annual contributions that are not funded. Actuaries have estimated the City's unfunded retiree healthcare liability to be as high as $1.65 billion. If fully pre-funded, the liability requires the City and employees to make an Annual Required Contributions (ARC) of approximately $101.3 million. This amount is in addition to the current contributions made to fund the pension benefit. Funding the cost of this liability is a significant challenge for the City and employees. The City must take the necessary steps to mitigate this liability; otherwise the liability will continue to escalate.

EVALUATION AND FOLLOW-UP

It is important to educate our stakeholders to understand the retiree healthcare costs and the current liability. A Retiree Healthcare (GASB) Team has been established consisting of representatives of the City Manager's Office, the Office of Employee Relations, the Budget Office, and the Departments of Human Resources, Finance, and Retirement Services. The Team is responsible for establishing partnerships with various stakeholders, including coordinating meetings to provide information and education regarding the retiree healthcare liability, as well as gathering input from a variety of stakeholders. Key stakeholders and partners in this effort include bargaining unit representatives, the City Labor Alliance (CLA), the Executive Management Forum, the Benefits Review Forum (BRF), the Retirement Boards and the Retiree Associations.

It is very important to remain mindful that any proposed changes for current and future employees must be discussed as part of the negotiation process with the City's bargaining unit representatives. The City is currently in negotiations with several bargaining units and will be negotiating with five additional bargaining units during fiscal year 2007-2008.

PUBLIC OUTREACH/INTEREST

☐ **Criteria 1:** Requires Council action on the use of public funds equal to $1 million or greater.
(Required: Website Posting)

☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

While this item does not meet the criteria above, this item will be placed on the August 7, 2007, Council Agenda and the memorandum will be available to the public on the City's website.

COORDINATION

This memorandum was coordinated with the Budget Office, the Department of Retirement Services and the City Attorney's Office.

In advance of the August 7th City Council meeting, copies of this memorandum will be provided to the bargaining unit representatives, the Retirement Boards, the Retiree Associations and members of the Executive Management (Unit 99) Forum. In addition, the memorandum will be discussed with the City Labor Alliance.

CEQA

Not a project

Alex Gurza	Mark Danaj	Scott P. Johnson
Employee Relations Director	Human Resources Director	Finance Director

For questions please contact Alex Gurza at 408-535-8155.

Attachment 1: The Segal Company Report, dated January 12, 2007
Attachment 2: Gabriel Roeder Smith & Company (GRS) Report, dated December 19, 2006
Attachment 3: Bartel Associates Report, dated July 2007

EXHIBIT 37

Attachment 3

City of San José

BARTEL ASSOCIATES, LLC

Retiree Healthcare Plan
June 30, 2007 Actuarial Valuation
Federated City Employees

July 2007

GURZA000629

City of San José – Federated City Employees
June 30, 2007 Retiree Healthcare Actuarial Valuation

On June 21, 2004, the Governmental Accounting Standards Board approved Statement No. 45 (GASB 45), Accounting Standards for *Other* (than pensions) *Post Employment Benefits* (OPEB). This report is based on the financial reporting standards established under GASB 45. Historically the City has partially funded the retiree healthcare benefits. GASB 45 will require the City account for the retiree healthcare benefits on an accrual basis (as benefits are earned). We understand the City is required to implement GASB 45 for its 2007/08 fiscal year[1].

STUDY RESULTS

Funding Policy: Currently the City contributes 50% of the cost of medical benefits and 73% (8/11ths) of the cost of dental benefits for retired Federated City employees, with the active Federated employees paying the remainder of the cost. The contributions are actuarially determined based on 15 year cash flow projections. For 2007/08, the City contribution rate for retiree medical and dental benefits is 3.82% of payroll; with the employees contributing 3.32% of payroll.

Funded Status: The plan funded status is equal to the Actuarial Liability (see definitions and assumptions section below) less plan assets. When assets equal liabilities, a plan is considered on track for funding.

To consider a retiree healthcare plan funded for GASB 45 purposes, assets must be set aside in a trust that cannot legally be used for any purpose other than to pay retiree healthcare benefits. The City's Federated retiree healthcare plan is currently partially funded. Plan assets are invested in an irrevocable trust together with the Federated City Employees' Retirement System assets. This has important implications on the discount rate assumption used to calculate plan liabilities (see definitions and assumptions section below). We have prepared valuation results under 2 scenarios:

- Continue Current Funding Policy – Uses a blended discount rate of 5.55%, which represents actual contribution that is 20% between Pay-As-You-Go (5%, assumed long term rate of return on City's General Fund) and full pre-funding (assumed 7.75%).
- Full Pre-Funding – Contributions made to an irrevocable trust with diversified assets which are assumed to earn a 7.75% long term return.

The following table summarizes the Federated plan's June 30, 2007 funded status (000s omitted):

	Current Funding Policy 5.55%	Full Pre-Funding 7.75%
■ Actuarial Liability (AL)		
• Actives	$ 489,704	$ 333,186
• Retirees	441,616	345,096
• Total	$ 931,320	$ 678,282
■ Plan Assets[2]	93,537	93,537
■ Unfunded AL (UAL)	$ 837,783	$ 584,745

[1] Assumes the City was a Phase I GASB 34 implementer.
[2] Estimated assets as of 6/30/2007.

Annual Required Contribution (ARC): GASB 45 doesn't require an agency make up any shortfall (unfunded liability) immediately, nor does it allow an immediate credit for any excess assets. Instead, the difference is amortized over time. Annual Required Contribution is nothing more than the current Normal Cost, plus the amortized unfunded liability or less the amortized excess assets. Simply put, this contribution is the value of benefits earned during the year plus something to move the plan toward being on track for funding. For the City's Federated valuation we calculated the total ARC as the total Normal Cost plus a 30-year amortization (as a level percent of pay) of the Unfunded Actuarial Liability. The estimated 2007/08 Federated employee contributions are then subtracted to determine the remaining portion of the 2007/08 ARC (000s omitted):

	Current Funding Policy 5.55%	Full Pre-Funding 7.75%
■ Total Normal Cost	$ 26,463	$ 15,387
■ UAL Amortization	39,842	36,450
■ 2007/08 Total Annual Required Contribution	$ 66,305	$ 51,837
■ Less 2007/08 Federated Employee Contributions (with interest to end of year)	9,561	9,661
■ 2007/08 Annual Required Contribution	$ 56,744	$ 42,176
■ 2007/08 Annual Required Contribution as a percentage of estimated 2007/08 payroll	20.2%	15.0%

Net OPEB Obligation (NOO): The Net OPEB Obligation is the historical (from implementation)[3] difference between actual contributions made and the Annual Required Contributions. If an agency has always contributed the required contribution, then the Net OPEB Obligation equals zero. However, an agency has not "made" the contribution unless it has been set aside and cannot legally be used for any other purpose.

[3] GASB 45 specifies the initial Net OPEB Obligation (at implementation) be set to zero.

Annual OPEB Cost (AOC): GASB 45 requires the Annual OPEB Cost equal the Annual Required Contribution, except when an agency has a Net OPEB Obligation at the beginning of the year. When that happens the Annual OPEB Cost will equal the ARC, adjusted for expected interest on the Net OPEB Obligation and reduced by an amortization of the Net OPEB Obligation (000s omitted):

	Current Funding Policy 5.55%	Full Pre-Funding 7.75%
■ 2007/08 Annual Required Contribution	$ 56,744	$ 42,176
■ Interest on Net OPEB Obligation	0	0
■ Amortization of Net OPEB Obligation	0	0
■ 2007/08 Annual OPEB Cost	$ 56,744	$ 42,176

The following illustrates the City's estimated June 30, 2008 Net OPEB Obligation for the Federated City employees (000s omitted):

	Current Funding Policy 5.55%	Full Pre-Funding 7.75%
■ June 30, 2007 Net OPEB Obligation	$ 0	$ 0
■ 2007/08 Annual OPEB Cost	56,744	42,176
■ 2007/08 Estimated City Contributions	(11,001)[4]	(42,176)[5]
■ June 30, 2008 Net OPEB Obligation	$ 45,743	$ 0

The actual June 30, 2008 Net OPEB Obligation for Federated employees will differ slightly from the above because the City contribution will be different from estimated.

[4] Estimated 2007/08 City contribution = 3.82% of estimated Federated payroll, with interest to end of year.
[5] Assumes full ARC is contributed.

Projected Benefit Payments: The Federated results presented in this report include the City's cash subsidy as well as the implied subsidy (see definitions and assumptians section below). Following are 15-year Federated benefit payout projections separated into cash and implied subsidy (000's omitted):

Year	Cash Subsidy	Implied Subsidy	Total
2007/08	$ 20,886	$ 2,719	$ 23,605
2008/09	23,504	3,180	26,684
2009/10	26,410	3,739	30,149
2010/11	29,639	4,288	33,926
2011/12	33,070	4,753	37,824
2012/13	36,534	5,154	41,688
2013/14	39,955	5,549	45,504
2014/15	43,585	6,053	49,638
2015/16	47,556	6,667	54,222
2016/17	51,325	7,253	58,578
2017/18	54,852	7,711	62,563
2018/19	58,518	8,260	66,778
2019/20	62,543	8,972	71,515
2020/21	66,662	9,698	76,360
2021/22	70,437	10,313	80,750

Sensitivity: The above results are based on a 30-year amortization of the unfunded liability. Following illustrates the impact of changing the amortization period to 20 years (000s omitted):

	Current Funding Policy 5.55%	Full Pre-Funding 7.75%
■ 30-year amortization		
• ARC $	$ 56,744	$ 42,176
• ARC %	20.2%	15.0%
■ 20-year amortization		
• ARC $	$ 70,972	$ 51,572
• ARC %	25.3%	18.4%

BASIC DEFINITIONS AND ASSUMPTIONS

Present Value of Benefits: When an actuary prepares an actuarial valuation, (s)he first gathers participant data (including active employees, former employees not in payment status, participants and beneficiaries in payment status) at the valuation date (for example June 30, 2007). Using this data and actuarial assumptions, (s)he projects future benefit payments. (The assumptions predict, among other things, when people will retire, terminate, die or become disabled, as well as what salary increases, general (and healthcare) inflation and investment return might be.) Those future benefit payments are discounted, using expected future investment return, back to the valuation date. This discounted present value is the plan's present value of benefits. It represents the amount the plan needs as of the valuation date to pay all future benefits – if all assumptions are met and no future contributions (employee or employer) are made. The June 30, 2007 Federated retiree healthcare Present Value of Benefits is $1.2 billion using a 5.55% discount rate ($798 million using a 7.75% discount rate), with $442 million of this for former employees who have already retired ($345 million using a 7.75% discount rate).

Actuarial Liability: This represents the portion of the present value of benefits that participants have earned (on an actuarial, not actual, basis) through the valuation date. The June 30, 2007 Federated retiree healthcare Actuarial Liability is $931 million using a 5.55% discount rate ($678 million using a 7.75% discount rate), with $442 million of this for former employees who have already retired ($345 million using a 7.75% discount rate).

Plan Assets: To consider a retiree healthcare plan funded for GASB 45 purposes, assets must be set aside in a trust that cannot legally be used for any purpose other than to pay retiree healthcare benefits. The City's Federated retiree healthcare plan is currently partially funded. Plan assets are invested in an irrevocable trust together with the Federated City Employees' Retirement System assets. Estimated plan assets for the Federated retiree healthcare plan as of 6/30/2007 are $93.5 million.

Normal Cost: The Normal Cost represents the portion of the present value of benefits expected to be earned (on an actuarial, not actual, basis) in the coming year. The June 30, 2007 total Federated retiree healthcare Normal Cost is $26.5 million (9.4% of payroll) using a 5.55% discount rate and $15.4 million using a 7.75% discount rate (5.5% of payroll). The Normal Cost, after subtracting the expected employee contributions, is $16.9 million (6.0% of payroll) using a 5.55% discount rate and $5.7 millions using a 7.75% discount rate (2.0% of payroll).

Actuarial Cost Method: This determines the method in which benefits are actuarially earned (allocated) to each year of service. It has no effect on the Present Value of Benefits, but has significant effect on the Actuarial Liability and Normal Cost. The City's June 30, 2007 retiree healthcare valuation was prepared using the Entry Age Normal, level percent of pay cost method.

Implied Subsidy: GASB 45 requires that the implied subsidy for retirees be included in the AAL and the ARC for plans that are not community rated. An implied subsidy exists when the premium for a group of employees is determined by aggregating the experience of the group. For example, assume we have one active employee and one (non-Medicare eligible) retiree with a $600 monthly premium. The underlying medical cost varies by age and gender and might actually be $300 per month for the younger active employee and $900 per month for older retiree. In this case, the premium for the employee is subsidizing (by $300) the premium of the retiree. We valued the implied subsidy for all the City's health plans.

Actuarial Assumptions: Under GASB 45, an actuary must follow current actuarial standards of practice, which generally call for explicit assumptions - meaning each individual assumption represents the actuary's best estimate.

GASB 45 requires that the discount rate is based on the source of funds used to pay benefits. This means the underlying expected long-term rate of return on plan assets for funded plans. Under the City's current funding policy, the City contributes more than Pay-As-You-Go but less than the full ARC. In this case, GASB 45 requires the discount rate be based on a blended rate. For this valuation, a blended rate of 5.55% was used, assuming the actual contribution is 20% between Pay-As-You-Go (5%, assumed long term rate of return on City's General Fund) and full pre-funding (assumed 7.75%). We also show results at 7.75% to show the impact of full pre-funding. The appropriate discount rate will be determined based on the plan's actual asset diversification.

Another key assumption is future healthcare inflation rates. Actual 2007 medical premiums were used in the valuation. The inflation rate for HMO's starts at 10.4% (the increase in 2008 premiums over 2007) and grades down to 4.5% (2017 premiums over 2016) and remains at 4.5% into the future. The inflation rate for PPO's starts at 11.3% (the increase in 2008 premiums over 2007) and grades down to 4.5% (2017 premiums over 2016) and remains at 4.5% into the future. This assumption means healthcare is assumed to increase, on the average, 7.4% for HMO's and 7.9% for PPO's a year for the next 10 years. Furthermore, since the valuation's general inflation assumption is 3%, it also means healthcare is assumed to level off at 1.5% over general inflation.

BENEFIT PROMISE

The following table summarizes medical benefits:

■ Medical Eligibility	■ Service or disability retirement directly from City with either: ➢ 15 years City service, or ➢ Receiving ≥ 37.5% final pay ■ Deferred vested members eligible at retirement if terminated with 15 years City service
■ Medical Benefit	■ 100% of lowest cost health plan available to active employees ■ 2007 Caps: ➢ Single - $399.28 (Blue Shield HMO) ➢ Family - $999.40 (Kaiser) ■ Same dollar Caps pre and post Medicare eligibility ■ Spouses, domestic partners, dependent children covered
■ Dental Eligibility	■ Service or disability retire directly from City with 5 years City service
■ Dental Benefit	■ 100% dental premiums for employee and dependents
■ Vision and Life	■ Available at retiree's expense
■ Surviving Spouse Benefit	■ Eligibility: ➢ Death while retired or before retirement but eligible for retiree medical and/or dental benefits, and ➢ Survivor receiving monthly survivorship allowance ■ Benefits: ➢ Same medical and dental benefits continue

Attachment 1

SEGAL

THE SEGAL COMPANY
120 Montgomery Street, Suite 500 San Francisco, CA 94104-4308
T 415.263.8200 F 415.263.8290 www.segalco.com

January 12, 2007

Via EMAIL and US MAIL

Mr. Edward F. Overton
Director/Retirement Services
City of San Jose Police and Fire Department Retirement Plan
1737 North First Street, Suite 580
San Jose, CA 95112-4505

Re: **City of San Jose Police and Fire Department Medical and Dental Insurance Plan GASB Statements No. 43 and No. 45 Results Using Requested Assumptions**

Dear Ed:

Our original draft valuation report for the City of San Jose Police and Fire Department Medical and Dental Insurance Plan dated October 24, 2006 was presented to the Board of Retirement on November 2, 2006. After the draft report was presented to the Board, a number of questions arose regarding differences in assumptions and methodologies between our draft valuation report and the valuation report issued by GRS (actuary for the Federated System) for the Federated Medical and Dental Plan.

We met with representatives of the City, GRS, representatives of the Retirement Boards and Macias and Gini (auditors for the City and the Retirement Systems) on December 8, 2006 to discuss the differences in assumptions and methods between GRS and Segal. As a result of that meeting, we were requested by your office to recalculate the GASB 43 and 45 results with both an 8.0% discount rate and a 5.3% discount rate, using both the Entry Age Normal (EAN) and Projected Unit Credit (PUC) cost methods. In addition, we have addressed several issues in this letter that were raised in our December 8 meeting.

- **Rerun the GASB 43 and 45 results using both a 5.3% discount rate and an 8.0% discount rate.**

Our original draft valuation report contained the results using both a 4.5% discount rate and an 8.0% discount rate. The 4.5% discount rate was predicated on the assumption that there would be no change in the Police and Fire Board's contribution policy to fund the cashflows for the medical and dental benefits payable over the next 10 years while the 8.0% discount rate was provided for illustrative purposes assuming that the liability would be funded on a full actuarial basis.

In the GRS report for the Federated Medical and Dental Plan, they provided the calculation using only the 8.25% discount rate they used for the Federated retirement benefit valuation assuming that the liability would be funded on a full actuarial basis.

At the December 8 meeting, the City requested that we provide an additional set of results assuming a 5.3% discount rate under the current 10-year cashflow funding policy. The 5.3% discount rate was calculated by weighting an assumed rate of 5% that the City believed it would be able to earn on its investment with the 8% return that the Police and Fire System would earn for contributions deposited under the current 10-year cashflow funding policy.

At the meeting, we requested the City to confirm that their 5% investment return assumption was a long term assumption because at the current time, the yields on 10-year and 30-year Treasury bonds are in the range of 4-5%. We have also confirmed, based on a review of a 2006 study prepared by the Police and Fire Board's investment consultant (that we received for another California public retirement plan client) that their prediction for return on shorter term cash investments was about 3.6% per annum over the next 20 years.

At the meeting, Macias and Gini opined that the 5.3%[1] discount rate requested by the City for the Police and Fire plan was within the reasonable range for such an assumption under GASB 43 and 45. We would defer to the Police and Fire Board's auditor as the final authority in the matter of selecting the ultimate discount rate.

- **Rerun the GASB 43 and 45 results using both the Entry Age Normal (EAN) and Projected Unit Credit (PUC) actuarial cost methods**

Our original draft valuation report contained the results using the EAN actuarial cost method, the same funding method adopted by the Police and Fire Retirement Board for budgeting contributions for retirement benefits. GRS had prepared results for the Federated Medical and Dental Plan using the PUC method even though the Federated Board uses the EAN method for funding retirement benefits.

[1] For the Federated Plan, the rate requested by the City was 5.6%.

The EAN method develops cost as a level percentage of payroll over each member's active working lifetime. The PUC method develops costs that accrue in proportion to the value of the service rendered by each member. The PUC costs generally start out lower but they will continue to increase as a percentage of each member's pay over their active working lifetime. Both methods are acceptable under GASB 43 and 45 and we believe there are merits for using a consistent actuarial funding method (i.e., EAN) for valuing the full actuarial accrued liability for retirement, medical and dental benefits. However, the choice of actuarial funding method is at the full discretion of the Retirement Board.

> Healthcare trend assumption

Our original draft valuation report used an initial healthcare trend assumption of 12% per year, grading down 1% per year down to an ultimate rate of 5%. The GRS valuation report for the Federated Medical and Dental Plan used an initial healthcare trend assumption of 12% per year, grading down 1% per year down to an ultimate rate of 4%. The 4% ultimate healthcare inflation assumption was also used by GRS as the general price inflation assumption. The initial issue was that Segal's ultimate medical trend assumption was higher than the general price inflation.

At the meeting, we explained our belief that there would continue to be increases in the utilization of medical services, etc. that would cause healthcare expenditures to outpace general price inflation. Since there would be real growth in wages, we do not believe a higher healthcare trend assumption would result in a prediction that healthcare expenditures would constitute a higher and higher percent of the U.S. economy over a very long period of time. In addition, at a recent meeting among a number of actuaries that perform GASB 43 and 45 studies in California, the general consensus was that ultimate healthcare inflation would be higher than general price inflation. The above arguments together with the observation that actual healthcare expenditures have exceeded our near term healthcare trend assumption over the last several years led us to continue to recommend to the Police and Fire Board the assumptions outlined in our draft report dated October 24, 2006.

It is our understanding your auditor is comfortable with our 5% ultimate trend rate assumption and GRS would also provide an alternative set of results assuming an ultimate healthcare trend of 4.5%.

> Percentage of Medicare Eligibles

Our draft valuation report stated that we were using an assumption that 90% of retirees reaching age 65 were eligible for Medicare. A question was raised at our December 8 meeting as to the appropriateness of the 90% assumption, given that individuals not eligible for Medicare at age 65 are required to enroll in Medicare.

After reviewing our valuation program we believe this assumption is appropriate, although the use of this assumption has no impact on the valuation results. The reason that this assumption has no impact on our valuation results is that regardless of whether a member is in Medicare, the Plan will pay the maximum subsidy for all members reaching age 65 when we take the Medicare Part B premium reimbursement into account.

> Implicit Subsidy

It is our understanding that for premium setting purposes, retirees not eligible for Medicare are pooled with active members. In general, the cost of healthcare for retirees is more expensive than for active members. For example, the true cost for a retiree may be $500 per month and the true cost for an active member under age 65 may be $200 per month. When they are pooled, the average cost may be $350. The difference between the $500 true cost for retiree coverage and the $350 "pooled cost", or $150 per month, is an "implicit subsidy" that must be valued under the GASB 43 and 45 requirements. Both Segal and GRS included the costs for the "implicit subsidy" in their valuation reports.

However, GRS reduced the "implicit subsidy" based on the idea that retirees generally have fewer children covered than actives. We have reviewed our internal calculations and have concluded that any adjustment we might incorporate to reflect the lower number of children for retirees would not have a material impact (less than 1% of payroll under the 4.5% discount rate scenario where the total Annual Required Contribution is 31.3% of payroll) on our valuation results.

Summary

We believe that all the actuarial assumptions and methods we used in our draft valuation report are in accordance with accepted actuarial principals. At the request of your office, we have prepared additional results using a 5.3% discount rate and an 8.0% discount rate, under both the EAN and PUC actuarial cost methods.

The attached exhibit contains our original valuation results and the results using the assumptions and methods requested by the Board. All results in the table are based on the same data used for our draft valuation report as of June 30, 2006. All actuarial assumptions are identical to the assumptions used in our draft valuation report, with the exception of the discount rate and the actuarial cost method, as noted above.

If you have any questions, please let us know.

Sincerely,

Paul Angelo, FSA, EA, MAAA
Senior Vice President & Actuary

Andy Yeung, ASA, EA, MAAA
Associate Actuary

Enclosure

MAM/bqb

SUMMARY OF VALUATION RESULTS AS OF JUNE 30, 2006

ACTUARIAL COST METHOD	EAN*	EAN	PUC	EAN*	PUC
DISCOUNT RATE	4.50%	5.30%	5.30%	8.0%	8.0%
Actuarial Accrued Liability by Participant Category					
Current retirees, beneficiaries and dependents	$469,344,884	$422,456,701	$422,456,701	$310,871,446	$310,871,446
Current active members	493,493,935	428,760,659	454,702,457	277,893,924	265,904,549
Total	$962,838,819	$851,217,360	$877,159,158	$588,765,370	$576,775,995
Actuarial Value of Assets	$38,381,423	$38,381,423	$38,381,423	$38,381,423	$38,381,423
Market Value of Assets	$40,519,000	$40,519,000	$40,519,000	$40,519,000	$40,519,000
Unfunded Actuarial Accrued Liability	$924,457,396	$812,835,937	$838,777,735	$550,383,947	$538,394,572
Funded Ratio	4%	5%	4%	7%	7%
Annual Required Contribution (ARC)					
Normal cost	$41,956,307	$34,053,189	$31,551,711	$17,495,644	$16,908,634
Amortization of the unfunded actuarial accrued liability	33,006,106	32,255,372	33,284,808	30,079,973	29,424,722
Less Employee Contributions	(8,260,094)	(8,260,094)	(8,260,094)	(8,260,094)	(8,260,094)
Adjustment for timing (payable throughout the year)	1,686,654	1,757,177	1,718,168	1,903,025	1,853,334
Total annual required contribution, including adjustment for timing	$68,388,973	$59,805,644	$58,294,593	$41,218,548	$39,926,596
ARC as percent of payroll (based on projected payroll of $218,521,000 for fiscal year 2006-2007)	31.3%	27.4%	26.7%	18.9%	18.3%

* Results presented in draft report dated October 24, 2006.

4004862v1/09381.102

GURZA000642

Attachment 2

GRS Gabriel Roeder Smith & Company
Consultants & Actuaries

9171 Towne Centre Drive
Suite 440
San Diego, CA 92122-1238

858.535.1300 phone
858.535.1415 fax
www.gabrielroeder.com

December 19, 2006

Mr. Edward F. Overton and Mr. Thomas Webster
Director, Department of Retirement Services
1737 N. First Street. Suite 580
San Jose, CA 95112-4505

Re: Valuation Results using Alternate Actuarial Assumptions

Dear Ed and Tom:

As you requested, we are providing alternate scenarios for the June 30, 2006 actuarial valuation results. We have calculated results using the following scenarios:

- Lower discount rate of 5.6% with Projected Unit Credit (PUC) funding
- Lower discount rate of 5.6% with Entry Age Normal (EAN) funding
- Lower discount rate of 5.6%, PUC funding and higher ultimate medical trend rate of 4.5%
- Lower discount rate of 5.6%, EAN funding and higher ultimate medical trend rate of 4.5%

Other than the changes noted above, we have used the same data and assumptions for this study as those used in the June 30, 2006 valuation of retiree health benefits.

The Annual Required Contribution (ARC) is the amount that must be expensed under GASB Statement No. 45. We have calculated the change in the ARC under the four scenarios, all using 30-year amortization:

- If the discount rate is lowered from 8.25% to 5.6%, the ARC increases by $11,135,541 to $35,485,078.
- If the discount rate is lowered to 5.6% and EAN funding is used, the ARC increases by $10,814,423 to $35,163,960.
- If the discount rate is lowered to 5.6% and the ultimate medical trend rate is changed to 4.5%, the ARC increases by $13,727,416 to $38,076,953.
- If the discount rate is lowered to 5.6%, EAN funding is used, and the ultimate medical trend rate is changed to 4.5%, the ARC increases by $14,176,501 to $38,526,038. Results of our calculations are enclosed.

In the two scenarios in which the ultimate trend rate has been increased to 4.5%, we retained the ultimate trend rate for dental at 4%.

With 30-year amortization of the unfunded liability, the results are interesting. As would always be the case, the accrued liabilities are higher under EAN than PUC due to EAN's recognition of liability earlier in an individual's career. However, there is higher normal cost under PUC, largely due to the relatively old average age of the active membership. If a much shorter amortization period was used, the expense under EAN would be significantly higher than under PUC.

Enclosed is a bill. We are only charging you for three of the four scenarios presented. Once it became apparent that the PUC and the EAN expense were reasonably close if 30-year amortization is elected, we wanted to show two scenarios under EAN instead of the one scenario initially proposed.

Please call if you have any questions.

Sincerely yours,

Rick Roeder

Rick Roeder, FSA

Rebekah Bayram

Rebekah Bayram, FSA

City of San Jose
Summary of Valuation Results
Scenarios with Alternate Actuarial Assumptions
June 30, 2006

We have calculated the Annual Required Contribution (ARC) as described in GAS 45 for Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions. Note that this amount is an accounting requirement, not a funding requirement. GAS 45 does not mandate pre-funding.

	6/30/2006 Original Valuation	Alternate Scenarios: Lower discount PUC	Lower discount EAN	Lower discount Higher Ultimate Trend PUC	Lower discount Higher Ultimate Trend EAN
Actuarial Liability					
Actuarial Liability - Active Lives	$169,292,376	$278,409,616	$318,388,171	$295,586,681	$332,052,460
Actuarial Liability - Inactive Lives	$7,852,245	$12,304,747	$12,304,747	$13,034,246	$13,034,246
Actuarial Liability - Retired Lives	$266,168,891	$349,254,205	$349,254,205	$357,851,959	$357,851,959
Total Actuarial Liability	$443,313,512	$639,968,568	$679,947,123	$666,472,886	$702,938,665
Funded Status					
Actuarial Value of Assets	$81,281,000	$81,288,000	$81,288,000	$81,288,008	$81,288,000
Actuarial Liability	$443,313,512	$639,968,568	$679,947,133	$666,472,886	$702,938,665
Unfunded Actuarial Liability	$362,025,512	$558,680,568	$598,659,123	$585,184,886	$621,650,665
Plan Funded Ratio	18%	13%	12%	12%	12%
Required Expense and Net Obligation					
Normal Cost	$3,613,887	$12,273,140	$10,291,002	$13,763,819	$12,697,832
Amortization of Unfunded Actuarial Liability	$20,735,650	$23,211,938	$24,872,958	$24,313,134	$25,828,206
Annual Required Contribution (ARC)	$24,349,537	$35,485,078	$35,163,960	$38,076,953	$38,526,038
Annual OPEB Cost	$24,349,537	$35,485,078	$35,163,960	$38,076,953	$38,526,038
Net OPEB Obligation	$0	$0	$0	$0	$0
Amortization Period (years)	30	30	30	30	30
Assumed Discount Rate	8.25%	5.60%	5.60%	5.60%	5.60%
Payroll	$275,558,882	$275,558,882	$275,558,882	$275,558,882	$275,558,882
ARC as percent of payroll	8.8%	12.9%	12.8%	13.8%	14.0%
Medical Trend	12% graded down to 4%	12% graded down to 4%	12% graded down to 4%	12% graded down to 4.5%	12% graded down to 4.5%
Dental Trend	6% graded down to 4%	6% graded down to 4%	6% graded down to 4%	6% graded down to 4%	6% graded down to 4%
Change in ARC in relation to original valuation		*$11,135,541*	*$10,814,423*	*$13,727,416*	*$14,176,501*

COUNCIL AGENDA: 04-21-09
ITEM: 3.5

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: April 7, 2009

Approved

Date 4/7/09

COUNCIL DISTRICT: N/A
SNI AREA: N/A

SUBJECT: RETIREE HEALTHCARE FUNDING

RECOMMENDATION

Adoption of a resolution to provide as follows:

A. Approve the terms of agreements (attached) with the bargaining units listed below and authorizing the City Manager to execute the agreements effective June 28, 2009:

1. Association of Building, Mechanical and Electrical Inspectors (ABMEI)
2. Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43)
3. Association of Maintenance Supervisory Personnel (AMSP)
4. City Association of Management Personnel (CAMP)
5. International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
6. Municipal Employees' Federation, AFSCME Local 101 (MEF)
7. Confidential Employees' Organization, AFSCME Local 101 (CEO)

B. Implement retiree healthcare funding for Executive Management and Professional Employees (Unit 99) and employees in the Unclassified Non-Management employee unit (Unit 82) who are in the Federated City Employees' Retirement System, effective June 28, 2009.

OUTCOME

Adoption of the resolution and authorization to execute the agreements that would implement retiree healthcare funding agreements between the City and ABMEI, AEA, AMSP, CAMP, IBEW, MEF and CEO, and to implement retiree healthcare funding for Executive Management and Professional Employees (Unit 99) and employees in Unit 82 who are in the Federated City Employees' Retirement System, effective June 28, 2009.

BACKGROUND

In August of 2007, City Administration brought forward to the City Council a memo on Retiree Healthcare. This memo provided information and background on the government accounting rules related to retiree healthcare, provided information on the retiree healthcare liability, and explored options to be considered to mitigate these costs. This memo can be found at http://www.sanjoseca.gov/clerk/Agenda/080707/080707_03.11.pdf.

This memo was prompted by the Governmental Accounting Standards Board (GASB) implementing reporting standards that require state and local governmental agencies to disclose the full cost of unfunded actuarial liabilities for Other Post Employment Benefits (OPEB), such as retiree healthcare, which include medical and dental benefits. The estimated unfunded retiree healthcare liability for the City of San Jose was estimated to be as high as **$1.65 billion**, based on the most recent actuarial analyses at that time. Factors that contribute to the amount of the liability include the level of the retiree medical benefit, escalating costs in medical premiums, the increasing number of retirees, and the City's current level of funding retiree healthcare benefits.

In response to the size of this projected liability and its potential impact, the City Council discussed retiree healthcare liability as an agenda item during two Council meetings in August of 2007. From these sessions, the City Council directed staff to:

1. Engage stakeholders in identifying strategies and alternatives to address our unfunded liability for retiree healthcare. Represented stakeholders were to include, at a minimum, employees, City Labor Alliance, Executive Management Forum, retiree associations, retirement boards, and South Bay Labor Council.

2. Continue to survey how other cities and counties are addressing their unfunded liabilities.

3. Engage experts, identified by the Administration and stakeholders, as necessary to evaluate strategies and approaches that are identified by stakeholders or have been implemented in other cities or counties.

4. Study how pre-full funding of benefits can be accomplished through a phased-in approach.[1]

As one component of the Stakeholder Process, a Joint Committee on Solutions to Retiree Healthcare was developed. This committee included representatives from the Police and Fire Department Retirement Plan and the Board of Administration of the Federated City Employees' Retirement System. The report can be found at http://www.sanjoseca.gov/retireehealthcare/documents/CommitteeReportonSolutionstoRetireeHealthcareIssuesfinalreport.pdf

The Joint Committee on Solutions to Retiree Healthcare make numerous recommendations, two of which were:

1. The Boards should recommend to the City the adoption of recommendation no. 1 of the Public Employee Post-Employment Benefits Commission:

> Public agencies providing OPEB [other post-employment benefits] benefits should adopt prefunding as their policy. As their policy, prefunding OPEB benefits is just as important as prefunding pensions. The ultimate goal of a prefunding policy should be to achieve full funding.

---

[1] City of San José Council Memorandum, August 28, 2007.

2. The Boards should recommend to the City the adoption of a reasonable ramp-up period, i.e., one not less than five years, to reach full funding of the annual required contribution (ARC) required by Government Accounting Standards Board (GASB) Statement nos. 43 and 45.

The City also developed a stakeholder process and held sessions for all City employees to attend. As a result of this stakeholder process, a Council Report was developed that included key themes from the stakeholder sessions. This report can be found at: http://www.sanjoseca.gov/retireehealthcare/documents/Attachment1toCouncilMemo061708.pdf. This report went to the City Council in June of 2008. The Council Memo accompanying this report can be found at: http://www.sanjoseca.gov/retireehealthcare/documents/CouncilMemo061708.pdf.

This report provided that one of the themes that came out of the stakeholder process was to find a way to phase in full prefunding.

After this extensive outreach and collaboration, different options to achieve full pre-funding of retiree healthcare benefits were considered. As each option was explored, it was done within the following context:

1. Based on an outside legal counsel opinion, it was determined that retiree healthcare benefits can be considered a "vested" benefit similar to the pension benefit and the City determined that it would not be pursuing changes to retiree healthcare benefits for current employees or current retirees.

2. The level and eligibility for retiree healthcare benefits for City employees are defined in the Municipal Code. Contributions from both the City and current employees provide the funding for these benefits. The contributions are made as a percentage of pay for current employees and are part of the contribution rates for the City's two retirement plans. Contributions for retiree dental benefits are made by the City and the employees in the ratio of eight-to-three. Contributions for retiree medical benefits are made by the City and the employees in the ratio of one-to-one (50/50 split).

In order to continue discussing with the City's bargaining units the issue of retiree healthcare, the City obtained reopener agreements to enable the City to engage in coalition bargaining on the subject of retiree healthcare benefits with the following bargaining units:

1. Association of Building, Mechanical and Electrical Inspectors (ABMEI)
2. Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43)
3. Association of Maintenance Supervisory Personnel (AMSP)
4. City Association of Management Personnel (CAMP)
5. International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
6. Municipal Employees' Federation, AFSCME Local 101 (MEF)
7. Confidential Employees' Organization, AFSCME Local 101 (CEO)

Upon mutual agreement from each of the above bargaining units and the City, coalition bargaining began in July of 2008, and a tentative agreement was reached with each of the seven bargaining units on March 4, 2009. The Tentative Agreements have been ratified by all seven bargaining units.

In addition, the retiree healthcare funding has been discussed with the Executive Management and Professional Employees (Unit 99) through the Unit 99 Forum and they have been notified of implementation effective June 28, 2009.

It should be noted that a similar agreement with the San Jose Police Officers' Association has already been approved by the City Council and is in the process of being implemented for June 28, 2009. The City is currently in negotiations with Operating Engineers, Local No. 3 and San Jose Firefighters, IAFF Local 230, on their successor agreements as a whole, which include the topic of retiree healthcare.

ANALYSIS

The following is a summary of the key provisions of the attached Tentative Agreements with the seven bargaining units, and a summary of the key information discussed with the Unit 99 Forum.

Retiree Healthcare Funding

Currently, retirees who meet eligibility requirements receive retiree healthcare benefits that provide for 100% of the premium for the lowest-cost plan available to active City employees. Thus, eligible retirees do not pay for any portion of the premium for the lowest-cost plan.

The San Jose Municipal Code (3.28.380) provides that contributions for retiree medical benefits shall be made by the City and employees in the ratio of one-to-one and contributions for retiree dental benefits shall be made in the ratio of eight-to-three. However, the current level of contributions by the City and employees to fund retiree healthcare are substantially less than the Annual Required Contribution (ARC) calculated by the Federated Plan actuary. Based upon the actuarial study for the Federated City Employees' Retirement System as of June 30, 2006, retiree healthcare benefits in the Federated City Employees' Retirement System are only 12% funded.

Effective June 28, 2009, the City and ABMEI, AEA, AMSP, CAMP, IBEW, MEF, CEO, Unit 99 and Unit 82 will transition from the current partial pre-funding of retiree healthcare benefits to full pre-funding of the Annual Required Contribution (ARC) over a period of five years. The Federated Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty-year period so that it shall be paid by June 30, 2039 (closed amortization).

The cash contribution rate for plan members shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

Healthcare Cost Mitigation

In the upcoming months, the City will be discussing with the Unit 99 Forum issues related to healthcare cost mitigation.

As part of the Tentative Agreements with the bargaining units, the parties agreed to commence meeting and conferring between January 1, 2010 and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

The parties intend to engage in these negotiations in a coalition bargaining process, as was done for these Tentative Agreements, with all other interested bargaining units, if any.

If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that the City will have the right to unilaterally implement in the event no agreement is reached at the conclusion of negotiations and mandatory impasse procedures, but that the unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

The Tentative Agreement with ABMEI also includes a provision that after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, ABMEI has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties.

EVALUATION AND FOLLOW-UP

As noted earlier, these Tentative Agreements with the bargaining units include a provision that the City and bargaining units have agreed to commence meeting and conferring between January 1, 2010 and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

In the upcoming months, the City will be discussing with the Unit 99 Forum issues related to healthcare cost mitigation.

PUBLIC OUTREACH/INTEREST

☑ **Criteria 1:** Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criterion 1. This memorandum will be posted on the City's website for the April 21, 2009 Council Agenda. This memo was included in the Early Distribution Council packet.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

The City and employees represented by ABMEI, AEA, AMSP, CAMP, IBEW, MEF and CEO and employees in Unit 82 and Unit 99 will phase-in to fully fund the Annual Required Contribution (ARC) over a five-year period. This will result in an incremental increase of up to 0.75% of pensionable pay in each fiscal year for employees, and an incremental increase of up to 0.75% of pensionable pay in each fiscal year for the City. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty-year period so that it shall be paid by June 30, 2039 (closed amortization).

The maximum cost to the City in Fiscal Year 2009-2010 is approximately $2.15 million if the incremental increase was 0.75% of pensionable pay. The amount is expected to be less than 0.75% of pensionable pay in 2009-2010, but the exact amount is pending an actuarial study by the retirement board's actuary.

Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

ARTICLE 25 RETIREE HEALTHCARE FUNDING
(Current Article 25 and subsequent articles to be re-numbered)

25.1 The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.

25.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

25.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

25.4 The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

25.5 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

3-4-09 TD

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

~~9.6 Notwithstanding the provisions of Article 9.4 and Article 24, the City may notify the Organization in writing once during the term of this 2007 – 2009 Agreement of its desire to reopen negotiations regarding retiree healthcare benefits. Upon such notice being given, the duly authorized representatives of the parties shall meet and confer in good faith in an effort to reach a mutual agreement with respect to retiree healthcare benefits. If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, the Organization has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit-down strikes.~~

9.5 Healthcare Cost Mitigation.

9.5.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

9.5.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than January 19, 2010, with or without participation of any other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

9.5.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, the Organization has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit-down strikes. The City agrees that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

3-4-09

CITY OF SAN JOSE AND ASSOCIATION OF BUILDING, MECHANICAL AND ELECTRICAL INSPECTORS MEDIATION TENTATIVE AGREEMENT

This agreement is still considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during confidential mediation. Anything not included in this document is not part of this tentative agreement. If this tentative agreement is not ratified by the membership or not approved by the City Council, the parties' positions will revert to the last on- the-record proposals prior to mediation. The provisions set forth above shall be incorporated in any successor Memorandum of Agreement.

FOR THE CITY:

ALEX GURZA
3-4-09

FOR THE UNION:

Tom Brim
Tom Brim
President
3-4-09

GURZA000654

CITY OF SAN JOSE AND ASSOCIATION OF ENGINEERS AND ARCHITECTS, IFPTE LOCAL #21
MEDIATION TENTATIVE AGREEMENT

~~ARTICLE 12 RETIREMENT~~

~~12.1 The parties have not reached any agreement on the subject of retiree healthcare benefits. Therefore, the parties agree to continue to Meet and Confer regarding changes to these benefits notwithstanding Article 3 of this MOA. Current retirement benefits set forth in the Municipal Code will continue during the term of this Agreement unless modified pursuant to the Meyers-Milias-Brown Act (MMBA).~~

~~The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and AEA shall commence no later than March 2008 with or without the participation of any other bargaining unit. The City and AEA shall negotiate in good faith in an effort to reach a mutual agreement.~~

~~If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the MMBA. The City and AEA agree that impasse will not be declared any earlier than June 30, 2008. The City agrees that it will not unilaterally implement changes to retiree healthcare benefits for AEA until any changes to retiree healthcare benefits become effective for the Municipal Employees' Federation (MEF).~~

ARTICLE 12 RETIREE HEALTHCARE FUNDING

12.1 The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.

3-4-09

12.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

12.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

12.4 The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

12.5 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

ARTICLE 3 AGREEMENT CONDITIONS

3.1.5 Healthcare Cost Mitigation.

3.1.5.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

3.1.5.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than January 19, 2010 with or without participation of any

3-11-09

other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

3.1.5.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The City agrees that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

This agreement is still considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during confidential mediation. Anything not included in this document is not part of this tentative agreement. If this tentative agreement is not ratified by the membership or not approved by the City Council, the parties' positions will revert to the last on-the-record proposals prior to mediation. The provisions set forth above shall be incorporated in any successor Memorandum of Agreement.

FOR THE CITY:

ALEX GURZA
3-4-09.

FOR THE UNION:

Nancy J. Ostrowski
IFPTE Local 21
March 4, 2009

3-4-09

CITY OF SAN JOSE AND ASSOCIATION OF MAINTENANCE SUPERVISORY PERSONNEL
MEDIATION TENTATIVE AGREEMENT

RETIREMENT

~~The parties have not reached any agreement on the subject of retiree healthcare benefits. The parties will commence the Meet and Confer process regarding those benefits no earlier than March 2008. The City and AMSP agree that impasse will not be declared any earlier than June 30, 2008.~~

RETIREE HEALTHCARE FUNDING

The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this section.

The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

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CITY OF SAN JOSE AND ASSOCIATION OF MAINTENANCE SUPERVISORY PERSONNEL
MEDIATION TENTATIVE AGREEMENT

The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

HEALTHCARE COST MITIGATION

The parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than January 19, 2010 with or without participation of any other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The City agrees that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

This agreement is still considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during confidential mediation. Anything not included in this document is not part of this tentative agreement. If this tentative agreement is not ratified by the membership or not approved by the City Council, the parties' positions will revert to the last on-the-record proposals prior to mediation. The provisions set forth above shall be incorporated in any successor agreement.

FOR THE CITY:

ALEX GURZA
3-4-09

FOR THE UNION:

3/4/09

Phyllis G. Schulz
3/4/09

GURZA000659

RETIREE HEALTHCARE FUNDING

The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistant with the pre-funding policy for the Plan as outlined in this section.

The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

3-4-09

It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

HEALTHCARE COST MITIGATION

The parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later then January 19, 2010 with or without participation of any other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Millas-Brown Act. The parties understand that this means that the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The City agrees that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

This agreement is still considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during confidential mediation. Anything not included in this document is not part of this tentative agreement. If this tentative agreement is not ratified by the membership or not approved by the City Council, the parties' positions will revert to the last on-the-record proposals prior to mediation. The provisions set forth above shall be incorporated in any successor agreement.

FOR THE CITY:

ALEX GURZA
3-4-09.

FOR THE UNION:

Gary Gale, President
March 4, 2009

GURZA000661

CITY OF SAN JOSE AND INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 332
MEDIATION TENTATIVE AGREEMENT

ARTICLE 25 RETIREE HEALTHCARE FUNDING
(Current Article 25 and subsequent articles to be re-numbered)

25.1 The City and the Union agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other then the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.

25.2 The City and the Union further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Union will support such amendments.

25.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more then .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more then .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

25.4 The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust

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is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

25.5. It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

~~9.5 Notwithstanding the provisions of Article 9.4 and Article 24, the City may notify the Union in writing once during the term of this Agreement of its desire to reopen negotiations regarding retiree healthcare benefits. Upon such notice being given, the duly authorized representatives of the parties shall meet and confer in good faith in an effort to reach a mutual agreement with respect to retiree healthcare benefits. If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, the Union has the right to engage in protected concerted activities on the employees' own time provided such protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include strikes, partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit-down strikes.~~

9.5 Healthcare Cost Mitigation.

9.5.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

9.5.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Union shall commence no later than January 19, 2010 with or without participation of any other bargaining unit. The City and Union shall negotiate in good faith in an effort to reach a mutual agreement.

9.5.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The City agrees

3-4-09. 3-4-09

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that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

This agreement is still considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during confidential mediation. Anything not included in this document is not part of this tentative agreement. If this tentative agreement is not ratified by the membership or not approved by the City Council, the parties' positions will revert to the last on-the-record proposals prior to mediation. The provisions set forth above shall be incorporated in any successor Memorandum of Agreement.

FOR THE CITY:

ALEX GURZA
3-4-09

FOR THE UNION:

Frank J. Pinson
3-4-09

Sol Vartan
3/5/09

CITY OF SAN JOSE AND MUNICIPAL EMPLOYEES' FEDERATION
MEDIATION TENTATIVE AGREEMENT

ARTICLE 15 RETIREE HEALTHCARE FUNDING
(Current Article 15 and subsequent articles to be re-numbered)

15.1 The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.

15.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

15.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

15.4 The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust

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is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

15.6 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

ARTICLE 3 AGREEMENT CONDITIONS

~~3.1.5 Notwithstanding Article 3.1.4 and Article 14, the City may notify the Organization in writing once during the term of this Agreement of its desire to reopen negotiations regarding retiree healthcare benefits. Upon such notice being given, the duly authorized representatives of the parties shall meet and confer in good faith in an effort to reach a mutual agreement with respect to retiree healthcare benefits. If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Millas-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.~~

3.1.5 Healthcare Cost Mitigation.

3.1.5.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

3.1.5.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than January 19, 2010 with or without participation of any other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

3.1.5.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Millas-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The City agrees that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

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CITY OF SAN JOSE AND MUNICIPAL EMPLOYEES' FEDERATION
MEDIATION TENTATIVE AGREEMENT

This agreement is still considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during confidential mediation. Anything not included in this document is not part of this tentative agreement. If this tentative agreement is not ratified by the membership or not approved by the City Council, the parties' positions will revert to the last on-the-record proposals prior to mediation. The provisions set forth above shall be incorporated in any successor Memorandum of Agreement.

FOR THE CITY:

ALEX GURZA
3-4-09

FOR THE UNION:
PRESIDENT
Yolanda A. Cruz
Yolanda A. Cruz
3/4/09

VP:
M L Martinez
3/4/09

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CITY OF SAN JOSE AND CONFIDENTIAL EMPLOYEES' ORGANIZATION MEDIATION TENTATIVE AGREEMENT

ARTICLE 26 RETIREE HEALTHCARE FUNDING
(Current Article 26 and subsequent articles to be re-numbered)

26.1 The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.

26.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

26.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

26.4 The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is

3-4-09

not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

26.5 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

ARTICLE 4 FULL UNDERSTANDING, MODIFICATION AND WAIVER

~~4.6 Notwithstanding Article 4.5 and Article 25, the City and the Organization have agreed to continue negotiations regarding retiree healthcare benefits. The duly authorized representatives of the parties shall meet and confer in good faith in an effort to reach a mutual agreement with respect to retiree healthcare benefits. If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures.~~

4.6 Healthcare Cost Mitigation.

4.6.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010, on retiree healthcare benefits for future employees and a medical reimbursement program for future retirees.

4.6.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than January 19, 2010 with or without participation of any other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

4.6.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The City agrees that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

3-4-09

CITY OF SAN JOSE AND CONFIDENTIAL EMPLOYEES' ORGANIZATION MEDIATION TENTATIVE AGREEMENT

This agreement is still considered tentative and shall not be considered final or binding until ratified by the membership and approved by the City Council. This document sets forth the full agreements of the parties reached during confidential mediation. Anything not included in this document is not part of this tentative agreement. If this tentative agreement is not ratified by the membership or not approved by the City Council, the parties' positions will revert to the last on-the-record proposals prior to mediation. The provisions set forth above shall be incorporated in any successor Memorandum of Agreement.

FOR THE CITY:

Alex Gurza
3-4-09

FOR THE UNION:

Trish L. Glassey
3/4/09

GURZA000670

EXHIBIT 40

RD:SSH
4/8/2009

RESOLUTION NO. 74882

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AGREEMENTS BETWEEN THE CITY OF SAN JOSE AND SEVERAL BARGAINING UNITS REGARDING RETIREE HEALTHCARE FUNDING, AND IMPLEMENTING RETIREE HEALTHCARE FUNDING FOR UNITS 99 AND 82

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

1. That the terms of the Tentative Agreements between the City of San José and the following bargaining units are hereby approved:

   (1) Association of Building, Mechanical and Electrical Inspectors (ABMEI)
   (2) Association of Engineers and Architects, IFPTE Local 21 (AEA Units 41/42 and 43)
   (3) Association of Maintenance Supervisory Personnel (AMSP)
   (4) City Association of Management Personnel (CAMP)
   (5) International Brotherhood of Electrical Workers, Local No. 332 (IBEW)
   (6) Municipal Employees' Federation, AFSCME Local 101 (MEF)
   (7) Confidential Employees' Organization, AFSCME Local 101(CEO)

   The City Manager is hereby authorized to execute the Agreements effective June 28, 2009 on behalf of the City.

2. That the City of San José is authorized to implement retiree healthcare funding for Executive Management and Professional Employees (Unit 99) and employees in the Unclassified Non-Management Employee Unit (Unit 82) who are in the Federated City Employees' Retirement System, effective June 28, 2009.

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T-2609.024-547754_2
Council Agenda: 4-21-09
Item No.: 3.5

3. The general terms of the Tentative Agreements and implementation on Units 99 and 82 are set out and described in the Memorandum to the Mayor and City Council dated April 7, 2009, from the Director of Employee Relations and attached as Attachment A and incorporated in this Resolution.

ADOPTED this 21st day of April, 2009, by the following vote:

AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: CHIRCO, CONSTANT.

DISQUALIFIED: NONE.

Chuck Reed

CHUCK REED
Mayor

ATTEST:

for LEE PRICE, MMC
City Clerk

EXHIBIT 41

RESOLUTION NO. 74803

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AN AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE SAN JOSE POLICE OFFICERS' ASSOCIATION WITH A TERM OF JULY 1, 2008 TO JUNE 30, 2010

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

1. That the Agreement between the City of San José and the San Jose Police Officers' Association (SJPOA), with a term of July 1, 2008 to June 30, 2010, is hereby approved. The City Manager is hereby authorized to execute the Agreement on behalf of the City.

2. The general terms of the Agreement are set out and described in the Memorandum to the Mayor and City Council dated February 10, 2009, from the Director of Employee Relations and attached as Attachment A and incorporated in this Resolution.

ADOPTED this 24th day of February, 2009, by the following vote:

AYES:	CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.
NOES:	NONE.
ABSENT:	CHIRCO.
DISQUALIFIED:	NONE.

Chuck Reed
CHUCK REED
Mayor

ATTEST: Lee Price
LEE PRICE, MMC
City Clerk

T-6971\ 534131_2
Council Agenda: 2-24-09
Item No.: 3.6a

GURZA000673

74803

COUNCIL AGENDA: 02-24-09
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: February 10, 2009

Approved

Date 2/10/09

COUNCIL DISTRICT: N/A
SNI AREA: N/A

SUBJECT: AGREEMENT WITH THE SAN JOSE POLICE OFFICERS' ASSOCIATION AND ADOPTION OF APPROPRIATION ORDINANCE AMENDMENTS IN THE GENERAL FUND

RECOMMENDATION

1. Adoption of a resolution to approve the terms of a Memorandum of Agreement with the San Jose Police Officers' Association (SJPOA) and authorizing the City Manager to execute the agreement with a term of July 1, 2008 to June 30, 2010.

2. Adoption of the following 2008-2009 Appropriation Ordinance amendments in the General Fund:

   a. Increase the Police Department's Personal Services appropriation by $10,822,874;

   b. Decrease the Salaries and Benefits Earmarked Reserve by $10,822,874.

OUTCOME

Adoption of the resolution and authorization to execute the successor agreement would implement a collective bargaining unit agreement between the City and the San Jose Police Officers' Association ("SJPOA").

BACKGROUND

The City of San Jose has a labor agreement with the bargaining unit, SJPOA. SJPOA represents approximately 1393 full time positions including employees in the classifications of Police Officer, Police Sergeant, Police Captain, Police Lieutenant, and Deputy Chief of Police.

The prior agreement expired on June 30, 2008. A complete copy of the prior agreement can be found at http://www.sanjoseca.gov/employeeRelations/moas/moa_poa.pdf.

ATTACHMENT A

GURZA000674

On January 24, 2009, the City and SJPOA reached a Tentative Agreement on a two-year agreement. The Tentative Agreement was ratified by the SJPOA membership on February 5, 2009. A complete copy of the Tentative Agreement can be found at http://www.sanjoseca.gov/employeeRelations/moas/ta_poa.pdf.

ANALYSIS

The following is a summary of the key provisions of the Tentative Agreement:

Term	July 1, 2008 to June 30, 2010.
Wages	3.75% general wage increase effective June 29, 2008.
	1.50% general wage increase effective June 28, 2009.
Retirement	Effective June 29, 2008, all classifications represented by the POA shall receive a 1.75% base pay increase in-lieu of an enhancement to the current retirement formula (2.5% of final compensation per year for up to 20 years and 4% of final compensation per year for 21-30 years of service).
Health Insurance Premium	Currently, the City pays 90% of the cost of the lowest priced plan and the employee pays the remaining 10% of the premium. However, the employees' 10% is currently limited to a maximum of $150 per month. Effective the first pay period of payroll calendar year 2009, employees' contribution for the lowest-priced medical insurance plan will be 10% of the premium with no cap.
Health Insurance Co-Pays	Effective April 1, 2009, co-pays for all available HMO plans shall be as follows: a. Office Visit Co-pay: $10 b. Prescription Co-pay: $5 for generic and $10 for brand name (The Blue Shield HMO will continue to include $15 non-formulary drug co-pay.) c. Emergency Room Co-pay: $50 This will result in Kaiser Office Visit Co-pays being increased from $0 to $10 and Blue Shield HMO Office Co-pays being increased from $5 to $10. In addition, Kaiser's Emergency Room Co-pay will increase from $0 to $50.
Vacation Accrual	Effective the first pay period of payroll calendar year 2010, employees' paychecks will reflect actual accrued vacation and employees will not accrue more than two times their annual vacation accrual rate.
Civilianization of Functions	During the term of the new agreement, the City may civilianize up to fifteen sworn positions in accordance with the existing provisions of the Memorandum of Agreement.

Retiree Healthcare Funding

Currently, retirees who meet eligibility requirements receive retiree healthcare benefits that provide for 100% of the premium for the lowest-cost plan available to active City employees. Thus, eligible retirees do not pay for any portion of the premium for the lowest-cost plan.

The San Jose Municipal Code (3.36.575) provides that contributions for retiree medical benefits shall be made by the City and employees in the ratio of one-to-one and contributions for retiree dental benefits shall be made in the ratio of three-to-one. However, the current level of contributions by the City and employees to fund retiree healthcare are substantially less than the Annual Required Contribution (ARC) calculated by the Plan actuary. Based upon the most recent actuarial study, retiree healthcare benefits in the Police and Fire Department Retirement Plan are only 5% funded based on the FY 06-07 Police & Fire Department Retirement Plan Comprehensive Annual Financial Report.

Effective June 28, 2009, the City and SJPOA have agreed to transition from the current partial pre-funding of police retiree healthcare benefits to full pre-funding the Annual Required Contribution (ARC) over a period of five years. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).

The cash contribution rate for plan members shall not have an incremental increase of more than 1.25% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 1.35% of pensionable pay in each fiscal year.

If at any time the plan member cash contribution rate exceeds 10% of pensionable pay or the City cash contribution rate exceeds 11% of pensionable pay (excluding implicit subsidy), the City and the SJPOA shall meet and confer on how to address any retiree healthcare contributions above 10% of pensionable pay for plan members or 11% of pensionable pay for the City. Such discussions will include alternatives to reduce retiree healthcare costs.

Labor Management Committee

The Tentative Agreement includes a provision indicating that on or before September 1, 2009, the City and SJPOA shall establish a labor management committee to research and consider approaches to mitigating the cost of active employee and retiree healthcare benefits. The committee shall study issues of plan design, co-pays and deductibles, a second tier for new employees, and other cost mitigation strategies.

Anti-Terrorism Training Pay

Since 2002, employees represented by the SJPOA have received a 5% premium pay for additional training related to Police-Anti-Terrorist Tactics. Effective March 22, 2009, the existing 5% Anti-

	Terrorist Training Pay will be rolled into base pay. Employees shall continue to complete the Police Department's annual Police Anti-Terrorist Tactics training each year as a condition of employment.
Holiday-in-Lieu	Most City employees receive 14 paid holidays. For many years, employees represented by the SJPOA have received a premium pay in lieu of holiday benefits. Employees are paid an additional 5.623% of pay as part of the bi-weekly paycheck regardless of whether or not the employee works on a holiday. Effective June 28, 2009, all classifications represented by the POA shall receive a 5.623% special pay adjustment in place of the existing 5.623% holiday-in-lieu compensation. No additional holiday compensation shall be provided.
Commencement of Negotiations	The current contract provides that the first meeting to commence negotiations for a successor agreement will be held no later than twenty (20) calendar days after the City or the SJPOA receives notice from the other, which may be any date after February 28 of the year in which the current contract terminates. In order to provide additional time for the negotiations, the tentative agreement includes a change to this provision so that negotiations can begin in January.

Cash Payment for Overtime Worked

Employees receive overtime compensation for hours worked beyond the designated work period. The City has negotiated contract provisions that allow for an employee to receive compensatory time in lieu of cash overtime. Compensatory time is additional time off of work that can be taken at a later time.

Since 1998, the contract between the City and the SJPOA has contained a provision that limits the amount of overtime in a bi-weekly pay period that can be taken in cash to a maximum of three hours. The City has the discretion to make cash overtime payments for any hours worked beyond the maximum of three hours. Further, there are certain programs specified in the contract that are not subject to the maximum three hour cash payment for overtime worked in a pay period. Employees in those programs receive cash payment for all authorized overtime that is worked in a pay period, even if such overtime exceeds three hours in a pay period.

Under the current contract, the outstanding amount of accrued compensatory time owed to an employee shall not exceed 240 hours by the end of each calendar year. In addition, the City may "buy down" compensatory time under the provisions of the contract, and all overtime must be paid in cash once an employee reaches a compensatory time balance of 480 hours.
If compensatory time is not taken as time off or paid in cash before an employee leaves City service, any accrued compensatory time must be paid in cash at the time the employee leaves City service.

Any payment of compensatory time is made at the employee's pay rate at time of payment or separation from City service, which often is higher than the pay rate effective when the overtime was worked. This is due to wage increases, salary step increases and promotions.

The Tentative Agreement provides that, effective June 28, 2009, the amount of overtime for which an employee can elect to be paid in cash shall increase from a maximum of three hours to a maximum of six hours per bi-weekly pay period. The increase in overtime that an employee can elect to have paid in cash is not an entitlement to overtime since any overtime worked must be appropriately authorized.

Certain Police Management Classifications in Unit 99

The new agreement with the SJPOA includes rolling into base pay the Anti-Terrorism Training Pay and Holiday-in-Lieu Pay. In addition, the new agreement includes a 1.75% general wage increase in-lieu of an enhancement to the current retirement formula.

The incumbents in the Chief of Police and Assistant Chief of Police classifications are not represented by the SJPOA. Those positions are unrepresented and are part of the City's Executive Management (Unit 99). Both of these classifications receive similar premium pays that members represented by the SJPOA receive. An analysis will be conducted of the various premium pays received by the Chief of Police and the Assistant Police Chief. Any changes that are recommended for these two classifications shall be brought forward to the City Council in conjunction with the recommendations related to Unit 99 for 2009-2010.

EVALUATION AND FOLLOW-UP

The new contract includes a provision that indicates that the City and Union have agreed to research and consider approaches to mitigating the cost to both parties of active employee and retiree healthcare benefits. This Labor-Management Committee shall begin on or before September 1, 2009.

PUBLIC OUTREACH/INTEREST

☑ **Criteria 1:** Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**

☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criterion 1. This memorandum will be posted on the City's website for the February 24, 2009 Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office, and the City Manager's Budget Office.

COST IMPLICATIONS

The ongoing increased annual direct cost of the SJPOA agreement is approximately $11.2 million for the first full year of implementation and approximately $4.5 million in the second year. For the 2008-2009 fiscal year, due to the effective implementation dates of the key provisions of the tentative agreement, the Police Department's personal services appropriation requires an increase of $10.8 million. These costs do not include the currently unknown cost increases for healthcare for active employees.

It is difficult to estimate the increased cash cost of providing employees the opportunity to elect cash payment for up to three additional hours of overtime per pay period since it is difficult to anticipate the number of employees who will be authorized to work the overtime and elect to be paid in cash for that overtime. The increase in overtime that an employee can elect to have paid in cash is not an entitlement to overtime since any overtime worked must be appropriately authorized. Such authorization for overtime will vary based on public safety needs. Even overtime taken as compensatory time is a liability that must be paid in cash if the employee does not use the compensatory time. The cost of paying employees cash for overtime at the time the overtime is worked is ultimately lower than the cash payments that would result in future payouts of accrued compensatory time. Cash payment of overtime is made at the current rate of pay and not a potentially higher rate of pay that could result because of general wage increases, salary step increases and promotions. Based upon a review of overtime worked in 2008, the cash cost of the increase in the amount of hours that an employee can elect to take as cash versus compensatory time is estimated to be in the range of $3 to $4 million in 2009-2010. Regular management of overtime costs is necessary and expected at any time. However, given the City's fiscal situation, the Police Department will need to enhance its management of overtime in a strategic and closely monitored manner and authorize overtime only in limited and necessary circumstances. For budgetary planning purposes, the 2009-2010 General Fund Forecast will include a $2 million increase in the Police Department's overtime allocation. The actual overtime expenditures will be closely monitored.

The City and employees represented by the SJPOA will phase-in to fully fund the full Annual Required Contribution (ARC) over a five year period. This will result in an incremental increase of up to a 1.25% of pensionable pay in each fiscal year for employees, and an incremental increase of up to 1.35% of pensionable pay in each fiscal year for the City. This is approximately a $2.1 million cost to the City in 2009-2010. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).

Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

Memorandum of Agreement

City of San José

and

San José Police Officers' Association

July 1, 2008 – June 30, 2010

CITY OF SAN JOSE
AND
THE SAN JOSE POLICE OFFICERS' ASSOCIATION
MEMORANDUM OF AGREEMENT

TABLE OF CONTENTS

Service from a reciprocal agency may not be combined with the City service in order to earn four (4%) percent per year.

49.5 Effective July 1, 2006, the following employee paid plan changes will be in effect for all employees represented by the organization;

49.5.1 Elimination of the thirty (30)-day window for the redeposit of withdrawn contributions, allowing for redeposit at anytime for active employees. Total impact to the plan to be paid by affected employee.

49.5.2 Elimination of the thirty (30)-day window for the purchase of service credit for previous Federated Retirement service credit, allowing for purchase at any time for active employees. Total impact to the plan to be paid by affected employee.

49.5.3 The ability to purchase service credit for time on unpaid leave of absence. Total impact to the plan to be paid by affected employee.

49.6 In lieu of an enhancement to the current retirement formula (2.5% of final compensation per year for up to 20 years and 4% of final compensation per year for 21-30 years of service), effective June 29, 2008, employees in classifications represented by the POA shall receive a 1.75% base pay increase. The 1.75% base pay increase shall be added to the general wage increase effective on June 29, 2008, and shall not be compounded.

ARTICLE 50 RETIREE HEALTHCARE FUNDING

50.1 The City and the Employee Organization agree to transition from the current partial pre-funding of police retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the police retiree healthcare benefits plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.36.575 (C) (1) and (2) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of three-to-one. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.

50.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.

50.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Police and Fire Department Retirement Plan Board's actuary, and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided in five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than 1.25% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 1.35% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 5.25% of pensionable pay.

50.4 If, at any time the calculated Plan member cash retiree healthcare contributions exceed 10% of pensionable pay or the calculated City cash retiree healthcare contributions exceed 11% of pensionable pay for the City (excluding implicit subsidy), the parties shall meet and confer on how to address any retiree healthcare contributions above 10% of pensionable pay for Plan members or 11% of pensionable pay for the City in order to fund the full ARC. Such discussions shall include alternatives to reduce retiree healthcare costs. If the parties are unable to agree on the manner in which to fully fund the retiree healthcare ARC (contributions exceeding 10% of pensionable pay for Plan members or 11% of pensionable pay for the City, excluding implicit subsidy), applicable impasse dispute resolution procedures shall apply.

Nothing in this Article shall be construed to obligate Plan members to pay more than 10% of pensionable pay or the City to pay more than 11% of pensionable pay to fund retiree healthcare.

50.5 The City will establish a qualified trust ("Trust") before June 28, 2009. If the Trust can not be established before June 28, 2009, then the City will hold in a separate reserve any required contributions over the policy method and then deposit, with interest actually earned, into the Trust as soon as practical after the Trust is established.

50.6 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Police retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

ARTICLE 51 MODIFICATION OF BARGAINING UNIT WORK

51.1 City Attorney's Office. Officers and Sergeants assigned to the City Attorney's Office may be reassigned to the Police department but such positions will not be civilianized.

51.2 For optimal resource management, the City, in its discretion, may add civilian personnel to perform the work currently performed by sworn personnel provided the following:

51.2.1 The POA bargaining unit will not be reduced in number of positions as a result of that action,

51.2.2 The work is not normally associated with sworn Peace Officer status and does not require a P.O.S.T. certificate. Examples of duties which are normally associated with Peace Officer status include the following:

-criminal investigations
-patrol-related functions
-emergency services
-community policing
-training of sworn personnel on public safety-related issues
-processing of prisoners, and

51.2.3. The City conducts a meeting with the POA to discuss operational impact prior to making a final decision.

51.3 It is understood by the parties that Investigative Aides and Community Service Officers are applicable to subsection 51.2.2 of this provision.

51.4 During the term of the 2008-10 agreement no more than fifteen (15) sworn positions will be "civilianized" in accordance with subsection 51.2. Any further civilianization, as defined by this section, would be subject to the meet and confer process at the expiration of this MOA.

51.5 The parties will evaluate the effects and success of subsections 51.2-51.4 at the end of this agreement. Agreed upon modifications, if any, shall be included in the following agreement.

THIS AGREEMENT executed on the **24th day of January, 2009** between the City of San Jose and the San Jose Police Officers' Association, in WITNESS thereof, the appropriate representative if the parties have affixed their signature thereto.

For the City of San Jose:

Debra Figone
City Menager

Alex Gurza
Director of Employee Relations

Aracely Rodriguez
Senior Executive Analyst

For the San Jose Police Officers' Association:

Robert Lopez
President

George Beattie
Vice President

Jeff Ricketts
Chief Financial Officer

Robert St. Amour
Director

John Tennant
General Counsel

EXHIBIT 42

SUPPLEMENTAL COUNCIL AGENDA: 06-09-09
ITEM: 3.6

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: June 1, 2009

Approved

Date 6/3/09

SUBJECT: TERMS OF CITY'S LAST, BEST, FINAL OFFER TO OPERATING ENGINEERS, LOCAL NO. 3

COUNCIL DISTRICT: N/A
SNI AREA: N/A

SUPPLEMENTAL MEMO

REASON FOR SUPPLEMENTAL

Based on new information, this memorandum supplements the memorandum dated May 21, 2009. On May 28, 2009, the City received notification from Operating Engineers, Local No. 3 that they will be taking the City's Last, Best, Final Offer to a vote of the members. Therefore, the Council action either needs to be implementation or approval of the agreement in the event the membership votes to accept the City's Last, Best, Final Offer.

In addition, OE#3 raised concerns about one provision under Article 27, Retiree Healthcare, in the City's Last, Best, Final Offer that has been in the City's proposals since March 19, 2009. This provision under Section 27.6 provides: "The Union hereby waives any potential right to meet and confer over retiree healthcare benefits for future hires." If OE#3 had agreed to the City's Last, Best, Final Offer, this provision would have been a part of the agreement. However, there was no intention to unilaterally implement that provision and it was not mentioned in the summary of terms in the Council memo dated May 21, 2009. However, to avoid any misunderstanding, we have removed it from the City's Last, Best, Final Offer and sent it to OE#3 on June 1, 2009, which is attached.

RECOMMENDATION

A. Adopt a resolution approving an agreement of the terms of the City's Last, Best, Final Offer, as described in the memorandum dated May 21, 2009 and this memorandum, between the City and Operating Engineers, Local No. 3, and authorizing the City Manager to execute the agreement, effective June 28, 2009.

B. In the alternative, in the absence of an agreement, adopt a resolution approving the implementation of the terms, as described in the memorandum dated May 21, 2009 and this memorandum, for employees represented by Operating Engineers, Local No. 3, effective June 28, 2009.

OUTCOME

Adoption of a resolution approving an agreement of the terms of the City's Last, Best, Final Offer, as described in the memorandum dated May 21, 2009 and this memorandum, between the City of San Jose and Operating Engineers, Local No. 3, and authorizing the City Manager to execute the agreement, effective June 28, 2009. In the alternative, in the absence of an agreement, the adoption of a resolution to implement the terms of the City's Last, Best, Final Offer,as described in the memorandum dated May 21, 2009 and this memorandum. Implementation of terms does not result in implementation of a Memorandum of Agreement (MOA).

Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Manager
EMPLOYEE RELATIONS

Via Email, Fax, U.S. Mail and Hand Delivery

June 1, 2009

Bill Pope
Business Agent, Operating Engineers Local No. 3
1654 The Alameda, Suite 110
San Jose, CA 95126

RE: Last, Best, Final Offer

Dear Bill:

On May 14, 2009, we sent you a letter enclosing the City's Last, Best, Final Offer. In that letter, we acknowledged receipt of your letter dated May 12, 2009, that indicated a desire to meet as provided for in Section 23(b) of the City's Employer-Employee Relations resolution. We advised you of our intent to take the Last, Best, Final Offer for Council approval in early June and that, therefore, it was important to meet soon. We asked that you please let us know your earliest availability to meet.

On May 18, 2009, we followed up when we did not hear back from you about scheduling a meeting. You responded on May 18, 2009, stating that you would be in contact with us once you received direction from your members. On May 26, 2009, we still had not heard back from you, and we advised you of our intent to place the item on the June 9, 2009, City Council agenda. On May 27, 2009, we sent you a copy of the Council memo.

We received an email from you on May 28, 2009, indicating that at the OE#3 General Membership meeting held the previous night, the members in attendance overwhelmingly gave the Negotiating team direction to take the City's Last, Best, Final Offer to the rest of membership to vote. Your email indicated that you would like to accomplish the vote over the next week and requested our office's assistance in facilitating getting this accomplished. We are glad to be of assistance, and our office has been in contact with you. We understand that the voting will occur over several meetings beginning on Wednesday, June 3, 2009.

We hope the OE#3 membership will vote to accept the City's Last, Best, Final Offer. However, on May 29, 2009, we received a fax of an Unfair Practice Charge that OE#3 has filed with the Public Employment Relations Board. The City will be carefully reviewing the Charge and responding accordingly.

We noted that one item OE#3 is raising is the provision that states, "The Union hereby waives any potential right to meet and confer over retiree healthcare benefits for future hires." This provision has been in the City's proposals since the proposal presented to OE#3 on March 19, 2009. Our proposal regarding the negotiability of future employee's retiree medical benefits was a response to comments made by you at the bargaining table, and OE#3 gave no indication that they were not in agreement with that language.

The City has no plans to unilaterally implement language regarding the negotiability of retiree healthcare benefits for future hires. In addition, to avoid any misunderstandings, the City hereby withdraws section 27.6 of the Retiree Healthcare portion of our Last, Best, Final Offer. (Revised proposal enclosed.)[1] Please note that the only change to the Last, Best, Final Offer attached is the removal of this provision.

We look forward to hearing back from OE#3 regarding the results of the membership's ratification vote prior to the City Council's action on June 9, 2009, to implement our Last, Best, Final Offer.

Sincerely,

Alex Gurza
Director of Employee Relations

Enclosure

c: Gina Donnelly, Deputy Director of Employee Relations

[1] When and if the City decides to pursue different retiree healthcare benefits for future hires, we will provide OE#3 with advance notice so that we can discuss any applicable bargaining obligations at that time.

2009 OE#3 NEGOTIATIONS
CITY LAST, BEST, FINAL OFFER

TERM

One year, effective the beginning of the first full pay period following ratification by the OE#3 Membership and approval by the City Council.

STEP INCREASES

All OE#3 represented employees will have step and merit increases frozen through the term of the agreement. This means that all wages will be frozen through the term of this agreement for employees represented by OE#3. Upon the expiration of this agreement, employees will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.

HEALTH INSURANCE

See Attached

DISCIPLINARY ACTION

See Attached

RETIREE HEALTHCARE

See Attached

2009 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
LAST, BEST, FINAL OFFER

CITY PROPOSAL #7, 8 and 9: HEALTH INSURANCE

Proposed Language

5.5 Health Insurance.

5.5.1 ~~The City will pay 90% of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay 10% of the premium for the lowest priced plan up to a maximum of $50.00 per month. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.~~

~~Effective the beginning of pay period one (1) of payroll calendar year 2007, the City shall pay ninety percent (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of one hundred ($100) per month. If the employee's ten percent (10%) contribution for the lowest priced plan exceeds one hundred dollars ($100) per month the City shall pay the difference. If an employee selects a plan other than the lowest priced plan, any additional amount required for the premium of any other plan beyond the cost of the lowest priced plan shall be paid for by the employee.~~

Effective the beginning of pay period ~~one~~ fifteen (15) of payroll calendar year ~~2008~~2009, the City shall pay ninety (90%) of the full premium cost of the lowest priced plan for employee or employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for the employee or for employee and dependent coverage ~~up to a maximum of one hundred and fifty dollars ($150) per month. If the employee's ten percent (10%) contribution for the lowest priced plan exceeds one hundred and fifty dollars ($150) per month the City shall pay the difference.~~ If an employee selects a plan other than the lowest priced plan, ~~any additional amount required for the premium of any other plan beyond the cost of the lowest priced plan shall be paid for by the employee~~the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

5.5.2 Effective July 1, 2009, co-pays for all available HMO plans shall be as follows:

a. Office Visit Co-pay shall be increased to $10
b. Prescription Co-pay shall be increased to $5 for generic and $10 for brand name. (The Blue Shield HMO will continue to include $15 for non-formulary drug co-pay.)
c. Emergency Room Co-pay shall be increased to $50

5.5.3 The Benefits Review Forum representatives may evaluate and recommend appropriate changes in the Health Insurance, Dental, and Orthodontic coverage, subject to approval by the City and ratification by the employee organization.

2009 CITY OF SAN JOSE – OE#3 NEGOTIATIONS
LAST, BEST, FINAL OFFER

CITY PROPOSAL #30: DISCIPLINARY ACTION

Proposed Language

ARTICLE 28 DISCIPLINE

Disciplinary action is defined as dismissal, demotion and suspension. In addition, the appointing authority may reduce an employee's salary step. The salary may be reduced to no lower than step one of the five-step salary range, and the term of the salary reduction will be specified in the notice of intended discipline. The salary may be reduced either for a specified period of time or until the condition which caused the salary reduction has been corrected. The employee may appeal this action to the Civil Service Commission according to the same rules as apply to other formal disciplinary appeals.

The City has a policy of progressive discipline. Discipline is intended to be corrective whenever possible. Discipline will be initiated pursuant to the guidelines outlined in the City of San Jose Discipline Training Handbook. When the need for disciplinary action arises, disciplinary action will be taken commensurate with the seriousness of the offense.

The City recognizes the process of timely, fair and consistent disciplinary actions is a key factor in maintaining positive employer-employee relations. It is in the interests of both parties to have allegations of misconduct investigated in a thorough and timely fashion.

The appeal process for any disciplinary action shall continue to be only those in effect at the time of the execution of this agreement.

When an employee is being interviewed and the employee reasonably believes that the investigation is likely to result in disciplinary action, the employee has the right to request to have a union representative present during the investigative interview.

No provisions of this Article ~~28~~ shall be subject to the grievance procedures of this ~~agreement~~Agreement. The appeal process for any disciplinary action shall only be those described in the San Jose Municipal Code and City of San Jose Discipline Policy in the City Policy Manual and are not subject to appeal through the grievance procedure of this Agreement.

ARTICLE 27 RETIREE HEALTHCARE
(Current Article 27 and subsequent articles to be re-numbered)

27.1 The City and the Union agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.

27.2 The City and the Union further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Union will support such amendments.

27.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided in five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Union agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

27.4 The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long as the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the

Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

27.5 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

EXHIBIT 43

RD:SSH
5/27/2009

RES NO 74988

RESOLUTION NO. 74988

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING IMPLEMENTATION OF THE TERMS CONTAINED IN THE CITY'S LAST, BEST, FINAL OFFER TO THE OPERATING ENGINEERS, LOCAL NO. 3, EFFECTIVE JUNE 28, 2009

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSÉ:

1. That the implementation of the City of San José's Last, Best, Final Offer to Operating Engineers, Local No. 3 is hereby approved. The City Manager is hereby authorized to implement the City of San José's Last, Best, Final Offer to Operating Engineers, Local No. 3, effective June 28, 2009.

2. The terms of the City of San José's Last, Best, Final Offer to Operating Engineers, Local No. 3 are set out and described in the Memorandum to the Mayor and City Council dated May 21, 2009, from the Director of Employee Relations and attached as Attachment A and incorporated in this Resolution.

ADOPTED this 16th day of June, 2009, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, LICCARDO, OLIVERIO, PYLE, REED.

NOES: CAMPOS, HERRERA, KALRA.

ABSENT: NGUYEN.

DISQUALIFIED: NONE.

Chuck Reed

CHUCK REED
Mayor

ATTEST: Lee Price

LEE PRICE, MMC
City Clerk

T-17886\ 559884 doc
Council Agenda: 6-9-09
Item No.: 3.12b

GURZA000696

EXHIBIT 44

COUNCIL AGENDA: 10/26/10
ITEM: 3.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Debra Figone

SUBJECT: **Suspension of SRBR Payments**

DATE: October 22, 2010

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

RECOMMENDATION

It is recommended that the City Council direct the City Attorney to draft an ordinance amending the Municipal Code to provide that no distribution will be made from the retirement plans' Supplemental Retiree Benefit Reserves (SRBR) during Fiscal Year 2010-2011.

OUTCOME

Approval of the recommendation will temporarily suspend Supplemental Retiree Benefit Reserve payments from the City's Police & Fire Department Retirement Plan and the Federated City Employees' Retirement System.

EXECUTIVE SUMMARY

On October 20, 2010, the Rules and Open Government Committee approved to agendize for the October 26, 2010, City Council meeting, discussion and action to amend the Municipal Code to temporarily suspend bonus payments from the retirement plans' Supplemental Retiree Benefit Reserves (SRBR).

The Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System each have a Supplemental Retiree Benefit Reserve (SRBR) that provides a supplemental "13^{th} check" benefit under certain conditions as specified in the Municipal Code. The 13^{th} pay is in addition to the monthly pension payments, disability and survivor benefits, annual 3% fixed cost of living adjustment (COLA) and retiree healthcare benefits eligible retirees receive. Based on the SRBR distribution provisions currently specified in the Code, it is anticipated that there will be a distribution of payments to retirees from both SRBRs later this year or early in 2011.

As of June 30, 2009, the plans' unfunded liabilities for pension benefits totaled $1.1 billion. In addition, the plans had a $1.4 billion unfunded liability for other post employment benefits (OPEB). OPEB benefits include retiree healthcare benefits. Regardless of the unfunded liability in each plan, the SRBR can still result in the distribution of SRBR payments (13th check) to retirees.

In recognition of the significant cost implications of pension and retiree healthcare and the importance of retirement reform to the long-term sustainability and availability of retirement benefits for City employees, the City has reconvened the General Fund Structural Deficit Elimination Plan (GFSDEP) Stakeholder Group. This group is charged with providing input to the City Council regarding major considerations and concerns with the existing retirement systems and priority elements for reform. In addition, the City will be commencing negotiations with the majority of the bargaining groups in 2011 to discuss the issue of retirement reform.

Due to the plans' significant unfunded liabilities, it is recommended that the SRBR distributions be suspended while retirement reform discussions continue.

BACKGROUND

On October 20, 2010, the Rules and Open Government Committee approved to agendize for the October 26, 2010, City Council meeting, discussion and action to amend the Municipal Code to temporarily suspend bonus payments from the retirement plans' Supplemental Retiree Benefit Reserves (SRBR). This memorandum is intended to provide additional background information on the program.

Federated City Employees' Retirement System

In 1986, the City Council established the Supplemental Retiree Benefit Reserve (SRBR) in the Federated City Employees' Retirement System to allocate investment income earned by retirement fund assets that exceeds expected returns to an account that would fund new, or supplemental, benefits for retirees. The SRBR was patterned on State legislation that had been adopted in 1983 to permit certain counties to do the same.

The Municipal Code sets forth a methodology for allocating funding to the SRBR but does not set forth a methodology for distributing the money in the SRBR to the Federated retirees[1]. (Attachment A) In 2003, the City Council adopted a Resolution establishing the current distribution methodology.[2] (Attachment B)

Police and Fire Department Retirement Plan

In 2001, the City Council adopted an ordinance establishing an SRBR program within the Police and Fire Department Retirement Plan.[3] (Attachment C)

In 2002, the Council adopted a Resolution approving the methodology for distribution of moneys from the Police and Fire SRBR to all retired members and survivors.[4] (Attachment D)

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[1] San Jose Municipal Code Section 3.28.340B
[2] Resolution No. 71870
[3] San Jose Municipal Code Section 3.36.580
[4] Resolution No. 70822

Distribution Methodology

The distribution methodology for each plan is memorialized in Resolutions 71870 and 70822. Under the Federated distribution methodology, all retired members and survivors receive a disbursement when the plans' investment returns exceed expected returns. Under the Police and Fire distribution methodology, all retired members and survivors receive a disbursement, so long as the SRBR principal balance would not be reduced by the distribution. For both plans, the criteria for determining the payment amount is based on a "point" system. Retirees receive points based on years of service, number of years retired and final average salary. Under this methodology, the largest payments are made to retirees that have been retired the longest and have rendered the longest service to the City.

Retirement Benefits

The City's two retirement systems provide defined retirement benefits to eligible employees. Both retirement plans use investment income and employer and employee contributions to provide eligible retirees with pensions based on years of service and highest average annual salary. The plans also provide a 3% guaranteed annual cost of living adjustment for all retirees, retiree healthcare benefits, survivor benefits, and permanent disability benefits to eligible members and beneficiaries.

3% COLA

The COLA benefit was changed to a guaranteed 3% COLA in 2002 in the Police and Fire Department Retirement Plan and in 2006 for the Federated City Employees' Retirement System. The 3% COLA is guaranteed to all retirees in the plans every year, regardless of the actual change in the consumer price index. Therefore, when inflation is less than 3% the retirees will continue to receive an annual 3% increase in their pension. The 3% COLA is in addition to the SRBR (13^{th} check)

Liabilities and Funding Status

The difference between the pension liability and the value of plan assets is called the unfunded liability. The unfunded liability is calculated two ways: (1) based on the market value of assets, and (2) based on the actuarial value of assets.

The current unfunded liability under both calculations is detailed below.

Pension Unfunded Liability			
	Federated	**Police and Fire**	**Total**
Market Value	$1.1 billion	$1.0 billion	$2.1 billion
Actuarial Value	$0.7 billion	$0.4 billion	$1.1 billion

Retiree Healthcare (OPEB) Unfunded Liability			
	Federated	**Police and Fire**	**Total**
Market Value	$0.7 billion	$0.7 billion	$1.4 billion
Actuarial Value	$0.7 billion	$0.7 billion	$1.4 billion

The San Jose Municipal Code provides that the City is responsible for 100% of the unfunded liability for the pension benefit.

As a result of this significant unfunded liability, funding ratios for both plans have fallen significantly.

Pension Plans	Federated	Police and Fire
Market Value of Assets	55%	66%
Actuarial Value of Assets	71%	87%

Retiree Healthcare (OPEB) Plans	Federated	Police and Fire
Market Value of Assets	11%	6%
Actuarial Value of Assets	11%	7%

Retirement Reform

In recognition of the significant cost implications of pension and retiree healthcare and the importance of retirement reform to the long-term sustainability and availability of retirement benefits for City employees, the City has reconvened the General Fund Structural Deficit Elimination Plan (GFSDEP) Stakeholder Group. This group is charged with providing input to the City Council regarding major considerations and concerns with the existing retirement systems and priority elements for reform. The Stakeholder Group is expected to provide a summary to the City Council in November 2010.

ANALYSIS

The SRBR in each retirement plan was established based on the concept that when the two retirement plans have "excess" earnings a portion of these "excess" earnings are used to provide a fund for additional benefits to retirees. The Police and Fire Department Retirement Plan assumes an 8% rate of return and the Federated City Employees' Retirement System assumes a 7.75% return. When the plans actual investment returns exceed the expected returns, a portion of these "excess earnings" is transferred into the SRBR.

However, the Board's actuaries have numerous assumptions including economic and non-economic factors such as salary growth, expected retirements, and mortality rates. When the Plans do not meet these assumptions, it results in an unfunded liability. As previously indicated, the City, and ultimately taxpayers are responsible for 100% of any unfunded pension liability. This is also the case when the investment returns do not meet the assumed rate of return adopted by the boards. The City has been experiencing significant increases in retirement contributions. This is due to investment losses in prior years, granting of retroactive benefit enhancements and the assumptions used by the plans' actuaries to calculate liabilities and contributions rates not holding true. According to the City Manager's Office's Five-Year Economic Forecast and

Revenue Projections for the General Fund and Capital Improvement Program future rates are expected to rise to around 75% of payroll for Police and Fire and more than 45 percent for Federated, causing the projected annual retirement contribution paid out of the City's General Fund to be more than $270 million in Fiscal Year 2014-15.

The Plans' had investment returns for Fiscal Year 2009-2010 that exceeded the assumed rate of return for each plan. As a result, it is anticipated that SRBR distributions will be made to retirees even though the Plans have a significant unfunded liability. The following chart provides the balance in the SRBR as of June 30, 2009.

Retirement Plan	SRBR Balance
Federated	$19.78 Million
Police & Fire	$32.3 Million

It is estimated that roughly $1.6 million could be available for distribution to retirees in the Federated plan and at least $700,000 could be available for distribution in the Police and Fire Plan. The Department of Retirement Services has indicated that this preliminary information will be provided to the Retirement Boards in November 2010, and that a declaration of excess earnings could be approved by the Retirement Boards as soon as audited financial statements are received. Under the Municipal Code and the current SRBR distribution resolutions, distributions automatically occur after the Boards' declaration of "excess" earnings.

The SRBR "13th check" is above and beyond the monthly pension benefit retirees receive. Retirees receive a monthly pension check and a 3% guaranteed cost of living increase each year. In addition, eligible retirees receive lifetime retiree healthcare benefits.

The following chart provides the average annual pension received by retirees for each plan.[5]

Federated City Employees' Retirement System					
Time Retired	Average Annual Pension			Average Age at Retirement	Average Years of Service
	Base	COLA	Total Pension*		
Last 5 Years	$41,302.28	$3,548.51	$44,850.79	58.50	21.09
Last 10 Years	$39,161.78	$5,212.33	$44,374.10	58.44	21.13
Last 15 Years	$36,659.50	$6,118.16	$42,777.66	58.37	20.78
ALL	$31,556.75	$8,505.83	$40,062.58	58.31	20.35

[5] Federated: Data includes approved retirements as of June 10, 2010. Excludes Deferred Vested and Disability Retirements that do not meet the Service Retirement Eligibility Requirements (55 yrs old with 5 years of service or 30 years of service at any age)
Police and Fire: Data includes approved retirement as of June 3, 2010. Excludes Deferred Vested and Disability Retirements that do not meet the Service Retirement Eligibility Requirements (50 yrs old with 25 years of service, 55 yrs old with 20 years of service or 30 years of service at any age)
* Does not include the value of Retiree Healthcare benefits.

Police and Fire Department Retirement Plan					
Time Retired	**Average Annual Pension**			**Average Age at Retirement**	**Average Years of Service**
	Base	**COLA**	**Total Pension***		
Last 5 Years	$96,884.63	$7,039.94	$103,924.57	55.01	27.97
Last 10 Years	$89,508.69	$12,187.86	$101,696.55	54.95	28.29
Last 15 Years	$80,283.78	$14,995.54	$95,279.33	54.76	28.31
ALL	$70,101.60	$18,127.47	$88,229.06	54.67	28.42

Due to the rising increases in retirement costs, the City is currently engaged in retirement reform efforts. It is recommended that the City Council suspend distribution of payments from the SRBR until further discussions regarding retirement reform continue and the City Council takes action on retirement reform. As part of the discussions, the issue of the SRBR program can be discussed. Currently the General Fund Structural Deficit Elimination Plan (GFSDEP) Stakeholder Group is having discussions on the City's Retirement Plans and will be providing considerations and input to the City Council in November 2010. Negotiations with the majority of the bargaining groups will commence in early 2011 and the issue of retirement reform will be discussed.

EVALUATION AND FOLLOW-UP

Approval of the City Administration recommendation to suspend distribution of payments from the SRBR would require an ordinance to amend the San Jose Municipal Code. Ordinances amending the San Jose Municipal Code would be prepared by the City Attorney's Office, in coordination with the City Manager's Office. Such ordinances would be placed on a future City Council agenda for approval and adoption.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to $1 million or greater.
  (Required: Website Posting)
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This report will be posted on the internet and a copy will be sent to the bargaining unit representatives and the retiree associations as soon as the memo has been distributed.

COORDINATION

This memo has been coordinated with the City Attorney's Office.

CEQA

Not a project.

Debra Figone
City Manager

For questions please contact Alex Gurza, Director of Employee Relations, at 535-8155.

Attachment A: San Jose Municipal Code Section 3.28.340B
Attachment B: Resolution No. 71870
Attachment C: San Jose Municipal Code Section 3.36.580
Attachment D: Resolution No. 70822

3.28.340 Disposition of earnings.

A. Definitions. For the purpose of this Section 3.28.340, the terms listed herein shall have the following meanings:

1. "Income account" means the account established in the general reserve pursuant to subsection B. below.

2. "Interest crediting rate" means the interest rate determined by the Board for crediting the employee contribution reserve.

B. Retirement fund reserves. There shall be established in the retirement fund the following reserves:

1. The employee contribution reserve.

a. The board shall credit to the employee contribution reserve all contributions made by members of the retirement system and all interest payable pursuant to subsection C. below.

b. Moneys in the employee contribution reserve shall be available for the payment of benefits and for the return of contributions pursuant to Section 3.28.780.

2. The supplemental retiree benefit reserve.

a. The board shall credit to the supplemental retire benefit reserve all interest payable pursuant to subsection C. below and that portion of the excess earnings determined pursuant to subsection D. below.

b. Distributions from the supplemental retiree benefit reserve shall be made in accordance with subsection E. below.

3. The general reserve.

a. The board shall establish an income account and shall credit the income account with all rents, interest, dividends, realized gains and losses, unrealized gains and losses, and all other income other than employer contributions, received during the fiscal year. The board shall pay from the income account all expenses and administrative costs as they are incurred.

b. The board shall credit to the general reserve all contributions made by the city, all interest payable pursuant to subsection C. below, and that portion of the excess earnings determined pursuant to subsection D. below.

c. Moneys in the general reserve shall be available for the payment of benefits and for the payment of the expenses and administrative costs of the retirement system.

4. Such other reserves as the board may determine from time to time.

C. Credit to contributions and reserves. All interest credited pursuant to this subsection C. shall be deducted from the income account.

1. Interest shall be credited to the employee contribution reserve on a semi-annual basis, or more frequently if authorized by the board, at the interest crediting rate.

2. Interest shall be credited to the supplemental retiree benefit reserve at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower. Interest credited to the supplemental retiree benefit reserve shall be calculated as though the transfer of excess earnings required by subsection D. had been made on July 1 of the calendar year, regardless of the actual date such transfer is made.

3. Interest shall be credited to the general reserve as follows:

a. Interest at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower; plus

b. Interest calculated as the difference between (i) the interest that would have been credited to the employee contribution reserve had the employee contribution reserve been credited at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower, and (ii) the interest actually credited to the employee contribution reserve pursuant to subsection C.1. above; provided, however, that there shall be no offset to the general reserve in any case where this difference is a negative number.

4. Interest shall be credited to any other reserves established by the board in the same manner as interest is credited to the supplemental retiree benefit reserve.

D. Excess earnings.

1. Within ninety days from and after receipt of audit reports for each fiscal year, the board shall determine the balance remaining in the income account after crediting of interest as provided in subsection C. above, and after payment of administrative costs and expenses of the retirement system for the applicable fiscal year.

2. If the balance remaining in the income account is greater than zero, the board shall by written resolution declare that balance to be the excess earnings for the applicable fiscal year, shall transfer ten percent of the excess earnings to the supplemental retiree benefit reserve, and shall transfer the remaining ninety percent of the excess earnings to the general reserve. If the balance remaining in the income account is less

than or equal to zero, the board by written resolution shall declare that there are no excess earnings and shall adjust the general reserve to reflect any negative balance in the income account so that the balance in the income account is zero as of the beginning of each fiscal year.

E. Distributions from the supplemental retiree benefit reserve.

1. The supplemental retiree benefit reserve shall be used only for the benefit of retired members, survivors of members, and survivors of retired members.

2. Upon the request of the city council or on its own motion, the board may make recommendations to the city council regarding the distribution, if any, of the supplemental retiree benefit reserve to retired members, survivors of members, and survivors of retired members. The city council, after consideration of the recommendation of the board, shall determine the distribution, if any, of the supplemental retiree benefit reserve to said persons.

(Prior code § 2904.1103; Ords. 20596, 22263, 22486, 23087, 25092, 27436.)

RJD:SD:sdv
11/18/03

Res. No. 71870

RESOLUTION NO. 71870

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING THE METHODOLOGY FOR THE DISTRIBUTION OF MONEYS IN THE SUPPLEMENTAL RETIREE BENEFIT RESERVE OF THE FEDERATED CITY EMPLOYEES RETIREMENT FUND

WHEREAS, pursuant to Section 3.28.340 D of the San José Municipal Code, the Board of Administration for the Federated City Employees Retirement System (the "Board") has established the Supplemental Retiree Benefit Reserve (the "SRBR") in the Federated City Employees Retirement Fund; and

WHEREAS, Section 3.28.340 D 1. provides that distributions from the SRBR shall be made only for the benefit of retired members, survivors of members, and survivors of retired members of the Federated City Employees Retirement System (the "System"); and

WHEREAS, Section 3.28.340 D 3. further provides that the Board shall make distributions in accordance with a methodology recommended by the Board and approved by the City Council; and

WHEREAS, the Board has developed a methodology for calculating the amount of distributions from the SRBR and has recommended City Council approval of said methodology;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

SECTION 1. The City Council hereby approves the methodology for the distribution of moneys from the Supplemental Retiree Benefits Reserve of the Federated City Employees Retirement Fund recommended by the Board and described in this Resolution.

SECTION 2. This approval shall remain in effect until such time as the Board recommends a subsequent methodology and the Council adopts a resolution approving the subsequent methodology.

SECTION 3. Total Annual Distribution.

A. The Total Annual Distribution for calendar year 2003 shall be One Million Dollars ($1,000,000).

B. The Total Annual Distribution for each calendar year beginning calendar year 2004 shall be the sum of (a) the amount, if any, in excess of the Minimum Balance, and (b) the annual interest earned in the SRBR as of June 30 in the year of distribution. For any year in which the actual balance in the SRBR as of June 30 in the year of distribution is less than or equal to the Minimum Balance, the total distribution for that year shall be limited to the annual interest earned in the SRBR.

SECTION 4. Eligible Distribution Points.

A. For the purposed of calculating the distribution to be made to each eligible recipient, distribution points shall be assigned for Years of Service and for Years Retired as follows:

1. Years Of Service (YOS) Points:

a. For each Retiree, there shall be assigned one (1) point for each year of the Retiree's Federated City service.

b. For each Surviving Spouse of a Retiree, there shall be assigned one (1) point for each year of the Retiree's Federated City service.

c. For each Surviving Spouse of an Active Member, there shall be assigned one (1) point for each year of the Active Member's Federated City service.

d. For each Surviving Children's Unit, there shall be assigned one (1) point for each year of the deceased person's Federated City service.

e. For each Optional Settlement Beneficiary, there shall be assigned one (1) point for each year of the deceased person's Federated City service.

2. Years Retired (YR) Points:

a. For each Retiree, there shall be assigned the number of points equivalent to the number of years from the effective date of the Retiree's retirement to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree receives as a retirement benefit under the System's benefit formula.

b. For each Surviving Spouse of a Retiree, there shall be assigned the number of points equivalent to the sum of:

i. The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and

ii. The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula.

c. I ach Surviving Spouse of an Active Member, there shall be assigned the number of points equivalent to the number of years from the date of the Active Member's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary earned by the Active Member as of the date of death. For the purposes of this paragraph, the percent of Final Average Salary shall not be less than forty percent (40%).

d. For each Surviving Children's Unit:

i. In the case where the deceased parent was a Retiree, there shall be assigned the number of points equivalent to the sum of:

(1) The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and

(2) The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary the Retiree receives as a retirement benefit under the System's benefit formula.

ii. In the case where the deceased parent was an Active Member, there shall be assigned the number of points equivalent to the number of years from the date of the Active Member's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final Average Salary earned by the Active Member as of the date of death. For the purposes of this paragraph, the percent of Final Average Salary shall not be less than forty percent (40%).

e. For each Optional Settlement Beneficiary, there shall be assigned the number of points equivalent to the sum of:

i. The number of years from the effective date of the Retiree's retirement to the date of the Retiree's death multiplied by the percent of Final Average Salary the Retiree received as a retirement benefit under the System's benefit formula, and

ii. The number of years from the date of the Retiree's death to the June 30 in the year for which the Total Annual Distribution is calculated multiplied by the percent of Final

Average Salary the Retiree received as a retirement benefit under the System's benefit formula.

B. Eligible Distribution Points shall be calculated for each eligible recipient as follows:

1. For each Retiree, the Eligible Distribution Points are the sum of the YOS points and the YR points.
2. For each Surviving Spouse of a Retiree, the Eligible Distribution Points are:
   a. The sum of the YOS points and the YR points, multiplied by
   b. The percent of the Retiree's benefit that is being received by the Surviving Spouse as a monthly benefit.
3. For each Surviving Spouse of an Active Member, the Eligible Distribution Points are the sum of the YOS points and the YR points.
4. For the Surviving Children's Unit, the Eligible Distribution Points are:
   a. The sum of the YOS points and the YR points, multiplied by
   b. The percent of the Retiree's or Active Member's benefit that would be received by the surviving spouse if there were a surviving spouse, and further multiplied by
   c. Twenty-five percent (25%) if there is only one child in the Surviving Children's Unit or fifty percent (50%) if there are two children in the Surviving Children's Unit or seventy-five percent (75%) if there are three or more children in the Surviving Children's Unit.
5. For the Optional Settlement Beneficiary, the Eligible Distribution Points are:
   a. The sum of the YOS points and the YR points, multiplied by
   b. The percent of the Retiree's benefit that is being received by the Optional Settlement Beneficiary as monthly benefit.

C. For the purposes of the calculation of Eligible Distribution Points, the number of years in each calculation shall be the actual number of years rounded to the nearest five decimal places.

SECTION 5. Distribution Point Value.

The Distribution Point Value shall be determined by dividing the Total Annual Distribution (as determined pursuant to SECTION 3 above) by the total number of Eligible Distribution Points for all eligible recipients.

SECTION 6. Allocation of Total Annual Distribution.

A. The distribution to be made to each eligible Retiree, Surviving Spouse of a Retiree, Surviving Spouse of an Active Member, and Optional Settlement Beneficiary shall be the eligible recipient's Eligible Distribution Points multiplied by the Distribution Point Value.

B. The distribution to be made to each eligible surviving child shall be the Surviving Children's Unit's Eligible Distribution Points multiplied by the Distribution Point Value and divided by the number of children in the Unit.

SECTION 7. For the purposes of this Resolution, the following definitions shall apply:

A. "Retiree" means a person who has retired from the Federated City Employees Retirement System under the provisions of the System. "Retiree" does not include any person who has separated from City service but is not receiving a benefit from the Plan.

B. "Surviving Spouse of a Retiree" means the person who meets the eligibility requirements for a surviving spouse benefit under Part 12 of Chapter 3.28 of the San José Municipal Code. "Surviving Spouse of a Retiree" does not include any person who is receiving a payment from the Retirement Fund solely because of a domestic relations order dividing the community interest in the retirement benefits.

C. "Surviving Spouse of an Active Member" means the person who meets the eligibility requirements for a surviving spouse benefit under Part 11 of Chapter 3.28 of the San José Municipal Code. "Surviving Spouse of an Active Member" does not include any person who would receive a payment from the Retirement

Fund upon the retirement of the Active Member solely because of a domestic relations order dividing the community interest in the retirement benefits.

D. "Surviving Children's Unit" means all eligible surviving children who are receiving surviving children's benefits under the applicable provisions of the Federated City Employees Retirement System.

E. "Optional Settlement Beneficiary" means a person who is receiving a monthly payment from the System because of an election made pursuant to Part 13 of Chapter 3.28 of the San José Municipal Code.

F. "Minimum Balance" means the dollar amount determined by multiplying Seven Thousand Dollars ($7,000) by the total number of eligible recipients in existence on June 30 in the year for which the Total Annual Distribution is calculated.

SECTION 8. In the event a person is a Retiree, a Surviving Spouse of a Retiree, a Surviving Spouse of an Active Member, a member of a Surviving Children's Unit, or an Optional Settlement Beneficiary on June 30 in the year for which the Total Annual Distribution is calculated, but dies before the distribution for that year is made:

A. The amount that would have been paid to the Retiree shall be paid:
   1. To the deceased's person's eligible survivor(s), or
   2. If there is no eligible survivor, to the deceased person's named beneficiary, or
   3. If there is no eligible survivor and no living named beneficiary, to the deceased person's estate.

B. The amount that would have been paid to a Surviving Spouse of a Retiree or a Surviving Spouse of an Active Member shall be paid:
   1. To the Surviving Children's Unit, or
   2. If there is no Surviving Children's Unit, to the estate of the Surviving Spouse.

C. The amount that would have been paid to a member of the Surviving Children's Unit shall be paid to the remaining members of the Surviving Children's Unit in equal shares. If there is no member of the Survivor Unit surviving, the amount that would have been paid shall revert to the SRBR balance to be carried over to the next distribution year.

D. The amount that would have been paid to an Optional Settlement Beneficiary shall be paid to the Optional Settlement Beneficiary's estate.

SECTION 9. All calculations made pursuant to this Resolution shall be made as of June 30 in the year for which the Total Annual Distribution is calculated. In the event an adjustment is made in the Years of Service, Years Retired, or percent of Final Average Salary for any eligible recipient and such adjustment is made after June 30 in the year for which the Total Annual Distribution is calculated, there shall be no adjustment to any calculation made pursuant to this Resolution.

ADOPTED this 16th day of December, 2003, by the following vote:

AYES:	CAMPOS, CHAVEZ, CHIRCO, CORTESE, DANDO, GREGORY, LeZOTTE, REED, WILLIAMS, YEAGER; GONZALES
NOES:	NONE
ABSENT:	NONE
DISQUALIFIED:	NONE

Ron Gonzales

RON GONZALES
Mayor

ATTEST:

Patricia L. O'Hearn

PATRICIA L. O' HEARN, City Clerk

3.36.580 Supplemental retiree benefit reserve.

A. Establishment and Purpose.

1. The board shall establish a reserve in the retirement fund to be known as the supplemental retiree benefit reserve or SRBR.

2. The purpose of the SRBR shall be to provide a source of funding for benefits to supplement those benefits otherwise provided by this plan or the Chapter 3.32 plan to former members of such plans who are receiving benefits, survivors of such former members, and survivors of members who die prior to receiving benefits from this plan.

B. Funding.

1. The initial amount allocated to the SRBR shall be ten percent of the plan's prefunded actuarial accrued liability as of June 30, 1999, as determined by the board's actuary. The board's actuary shall calculate the initial funding amount without regard to any plan amendments that became effective after June 30, 1999.

2. Each June 30, beginning June 30, 2000, there shall be allocated to the SRBR the investment earnings attributable to the balance in the SRBR as of June 30 of the calendar year in which the allocation is made. Investment earnings credited to the SRBR shall be calculated as though the transfer required by paragraphs 3. and 4. of this subsection B. had been made on the immediately following July 1 (first allocation on July 1, 2000) regardless of the actual date such transfer is made. In the event the investment earnings for the retirement fund are less than zero, no investment earnings shall be allocated to the SRBR and no reduction shall be made to the SRBR balance except as provided in subsection C. below.

3. The board shall determine the excess earnings for the twelve months ending June 30, 2000, and for the twelve months ending June 30, 2001, and shall transfer to the SRBR ten percent of the excess earnings for each such twelve-month period.

4. Within ninety days from and after receipt of audited financial statements for each fiscal year, commencing with the year 2002, the board shall determine, and by written resolution declare, the excess earnings as of June 30 in each such year, and shall transfer ten percent of such excess earnings to the SRBR. The excess earnings shall be added to the SRBR principal and shall not be available for distribution under subsection D.

C. Reduction of SRBR Balance.

1. If the city's contribution rate, as determined by the board's actuary during any actuarial valuation performed after June 30, 1999, will increase as a result of poor investment earnings in the retirement fund, there shall be transferred from the SRBR

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to the regular retirement fund and the cost-of-living fund an amount equal to ten percent of the city's increased contributions for the first twelve months following the increase in the contribution rates. Such transfers shall be limited to those situations where the increase in the city's contribution rate is attributable to poor investment earnings; no such transfer shall be made for any increase in the city's contribution rate that is due to any factor other than poor investment earnings including, but not limited to, increases in medical or dental premium costs, enhancements to benefits provided under the plan, or changes in the actuarial assumptions.

2. Notwithstanding paragraph 1. of this subsection C., the amount transferred from the SRBR because of the increase in the city's contributions shall not exceed five percent of the accrued balance in the SRBR as of the date of the actuarial valuation.

D. Distributions.

1. The board shall make an initial distribution from the SRBR during calendar year 2002.

2. Beginning in calendar year 2003, the board shall make an annual distribution from the SRBR.

3. The initial distribution from the SRBR shall be made solely to former members of this plan or the Chapter 3.32 plan who are receiving benefits as of June 30, 2001, and survivors (of such former members or of members who died prior to receiving benefits from this plan) who are receiving benefits as of June 30, 2001; provided, however, that if a member or former member died after June 30, 2001, but before the initial distribution, the survivor shall be deemed to have been receiving benefits as of June 30, 2001.

4. All subsequent annual distributions from the SRBR shall be made solely to former members of this plan or the Chapter 3.32 plan who are receiving benefits as of the June 30 immediately preceding the distribution date and survivors (of such former members or of members who died prior to receiving benefits from this plan) who are receiving benefits as of said June 30.

5. The board shall develop a methodology for distributions from the SRBR such that supplemental benefits provide a greater benefit for those persons who have been in benefit status for a longer period of time and those persons receiving the lowest monthly benefit payments. Upon the approval of the methodology by the city council, the board shall make distributions in accordance with such methodology.

6. Except as required by subsection C. or in the case of the termination of this plan, the board shall not transfer or distribute funds in the SRBR if such transfer or distribution would reduce the SRBR principal.

E. Definitions. For the purpose of this Section 3.36.580, the terms listed herein shall have the following meanings:

1. "Excess earnings" means the earnings of the retirement fund that remain after interest has been credited to the SRBR as provided in paragraph B.2. and the actuarial assumed earnings rate adopted by the board (and in effect on June 30 of the year in which the SRBR calculation is performed) has been credited to other reserves.

2. "Former member" means a person who has retired under the provisions of this chapter or Chapter 3.32 or a person who separated from city service without retiring but left his or her contributions on deposit in the retirement fund.

3. "Investment earnings" means the earnings of the retirement fund during the twelve months ending June 30 as determined by the board's actuary using the same methodology used to determine the value of assets for the actuarial valuation. In the case of investment earnings attributable to the SRBR, the application of the methodology shall begin as of July 1, 1999.

(Ords. 26416, 26536.)

RD:SD:sdv
01/14/02

RESOLUTION NO. 70822

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING THE METHODOLGY FOR THE DISTRIBUTION OF MONEYS IN THE SUPPLEMENTAL RETIREE BENEFIT RESERVE OF THE POLICE AND FIRE DEPARTMENT RETIREMENT FUND

WHEREAS, pursuant to Section 3.36.580 A of the San José Municipal Code, the Board of Administration for the Police and Fire Department Retirement Plan (the "Board") has established the Supplemental Retiree Benefit Reserve (the "SRBR") in the Police and Fire Department Retirement Fund; and

WHEREAS, Section 3.36.580 D provides that distributions from the SRBR shall be made only to retired members, survivors of members and survivors of retired members of the Police and Fire Department Retirement Plan (the "Plan"); and

WHEREAS, Section 3.36.580 D further provides that the Board shall make distributions in accordance with a methodology developed by the Board and approved by the City Council; and

WHEREAS, the Board has developed a methodology for calculating the amount of distributions from the SRBR and has recommended City Council approval of said methodology;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:

SECTION 1. The City Council hereby approves the methodology for the distribution of moneys from the Supplemental Retiree Benefits Reserve of the Police and Fire Department Retirement Fund recommended by the Board and described in this Resolution.

SECTION 2. This approval shall remain in effect until such time as the Board recommends a subsequent methodology and the Council adopts a resolution approving the subsequent methodology.

SECTION 3. Base Distribution.

A. Eighty percent (80%) of the annual amount available for distribution from the SRBR shall be distributed as the "Base Distribution". The amount of the Base Distribution to be paid to each Retired Member or Survivor Unit shall be determined by multiplying the total Base Distribution by the applicable Distribution Fraction.

B. For the purposed of calculating the Distribution Fraction, points shall be assigned for Years of Service and for Years Retired as follows:

1. Years Of Service (YOS) Points:

a. For each Retired Member, there shall be assigned one (1) point for each year of the Retired Member's Police and Fire Plan service for each of the first twenty (20) years plus two (2) points for each year in excess of twenty (20) years.

b. For each Survivor Unit, there shall be assigned one (1) point for each year of the deceased person's Police and Fire Plan service for each of the first twenty (20) years plus two (2) points for each year in excess of twenty (20) years. In the case where the deceased person died before separating from City service, the Survivor Unit shall be credited with the greater of (i) the actual number of years of the deceased person's Police and Fire Plan service or (ii) thirty years.

2. Years Retired (YR) Points: There shall be assigned two (2) points for each year retired where:

a. For each Retired Member, Years Retired means the number of years from the effective date of the Retired Member's retirement to the June 30 immediately preceding the date the Base Distribution is made.

b. For each Survivor Unit, Years Retired means the number of years from the Survivor Unit's effective date to the June 30 immediately preceding the date the Base Distribution is made where "effective date" means:

i. The effective date of the deceased person's retirement where the deceased died after retirement under this Plan; or

ii. The date of the deceased person's death in the case where the deceased died prior to separation from City service or died after separation from City service but before receiving any benefits from this Plan.

c. Notwithstanding paragraph b above, in the case where a surviving spouse's benefits ceased because of remarriage but were reinstated pursuant to Section 3.36.1295, Years Retired for the Survivor Unit means the actual number of years during which survivorship benefits were paid from this Plan to any member of the Survivor Unit.

C. The Distribution Fraction shall be determined as follows:

$$\frac{\text{Years Of Service Points + Years Retired Points}}{\text{Total Points for Base Distribution}}$$

D. The amount payable to each member of the Survivor Unit shall be the total Base Distribution payable to the Survivor Unit divided among the persons in the Survivor Unit in the same proportion as the survivorship benefits are paid.

E. For the purposes of distributions from the SRBR, the number of years in each calculation shall be the actual number of years rounded to the nearest year.

SECTION 4. <u>Bonus Payment.</u>

A. Twenty percent (20%) of the annual amount available for distribution from the SRBR shall be distributed as the "Bonus Payment". Bonus Payments shall be made only to Retired Members and Survivor Units who meet the following eligibility requirements:

1. The Years Retired is at least ten (10) years; and
2. The Retired Member or Survivor Unit is receiving a monthly benefit from the Plan that is less than two-thirds of the average monthly retirement benefit paid during the twelve months ending on the June 30 immediately preceding the date the Base Distribution is made.

B. The amount of the Bonus Payment to be paid to each eligible Retired Member or eligible Survivor Unit shall be determined by multiplying the total Bonus Payment by the applicable Distribution Fraction.

C. For the purposes of calculating the Distribution Fraction, points shall be assigned for Years Of Service and for Years Retired as described in SECTION 3 of this Resolution.

D. The Distribution Fraction shall be determined as follows:

$$\frac{\text{Years Of Service Points} + \text{Years Retired Points}}{\text{Total Points for Bonus Payment}}$$

E. The amount payable to each member of the Survivor Unit shall be the total Bonus Payment payable to the Survivor Unit divided among the persons in the Survivor Unit in the same proportion as the survivorship benefits are paid.

SECTION 5. For the purposes of this Resolution, the following definitions shall apply:

A. "Retired Member" means a person who has retired from the Police and Fire Department Retirement Plan under the provisions of the Plan. "Retired Member" does not include any person who has separated from City service but is not receiving a benefit from the Plan.

B. "Survivor Unit" means all eligible survivors (eligible surviving spouse and eligible surviving children) who are receiving a survivor's benefit under the provisions of the Police and Fire Department Retirement Plan. "Eligible survivor" does not include any person who is receiving a payment from the Retirement Fund solely because of a domestic relations order dividing the community interest in the retirement benefits.

C. "Total Points for Base Distribution" means the sum of the numerators of all Distribution Fractions for all Retired Members and all Survivor Units.

D. "Total Points for Bonus Payment Years" means the sum of the numerators of all Distribution Fractions for the Retired Members and Survivor Units who are eligible to receive a Bonus Payment.

SECTION 6. In the event a person is a Retired Member or is a member of a Survivor Unit on the June 30 immediately preceding the date the Base Distribution is made, but dies before the distribution for that year is made:

A. The amount that would have been paid to the Retired Member shall be paid to the deceased's Survivor Unit or, if there is no eligible survivor, to the deceased person's named beneficiary. If there is no eligible survivor and no living named beneficiary, the amount that would have been paid shall become available for distribution to the remaining eligible Retirement Members and Survivor Units.

B. The amount that would have been paid to a member of the Survivor Unit shall be paid to the remaining members of the Survivor Unit in the same proportion as the survivorship benefits are paid. If there is no member of the Survivor Unit surviving, the amount that would have been paid shall become available for distribution to the remaining eligible Retirement Members and Survivor Units.

ADOPTED this 29th day of January, 2002, by the following vote:

AYES: CAMPOS, CHAVEZ, CORTESE, DANDO, LeZOTTE, REED, SHIRAKAWA, WILLIAMS, YEAGER; GONZALES

NOES: NONE

ABSENT: NONE

DISQUALIFIED: CIQUISTO

Ron Gonzales
RON GONZALES
Mayor

ATTEST:
Patricia L. O'Hearn
PATRICIA L. O' HEARN
City Clerk

EXHIBIT 45

COUNCIL AGENDA: 05/17/11
ITEM: 3.6

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Debra Figone

SUBJECT: **Continued Suspension of SRBR Payments**

DATE: May 13, 2011

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

REASON FOR ADDENDUM

The suspension of the Supplemental Retiree Benefit Reserve (SRBR) payments for both retirement plans ends on June 30, 2011. To continue this suspension for Fiscal Year 2011-2012, the City Council would need to approve and adopt an ordinance for the Police and Fire Department Retirement Plan and resolution for the Federated City Employees' Retirement System prior to July 1, 2011.

RECOMMENDATION

It is recommended that the City Council:

(a) Approve an ordinance amending Section 3.36.580 of Part 4 of Chapter 3.36 of Title 3 of the San José Municipal Code to provide that there shall be no supplemental retiree benefit reserve distribution from the Police and Fire Department Retirement Plan during Fiscal Year 2011-12, upon a finding that is needed to adopt the ordinance within a time period which does not allow for a sixty day review period by the Board of Administration of the Police and Fire Department Retirement Plan under San José Municipal Code Section 3.36.485.A.; and refer the ordinance to the Board for study and consideration pursuant to San José Municipal Code Section 3.36.485.B; and

(b) Direct staff to forward for review by the Board of Administration of the Federated City Employees' Retirement Plan a draft resolution amending and restating Resolution No. 75635 to provide that there shall be no supplemental retiree benefit reserve distribution from the Federated City Employees' Retirement Plan during Fiscal Year 2011-2012.

OUTCOME

Approval of the recommendation will continue to temporarily suspend the Supplemental Retiree Benefit Reserve payments from the Police & Fire Department Retirement Plan and the Federated City Employees' Retirement System during Fiscal Year 2011-2012.

BACKGROUND

On October 26, 2010, the City Council discussed actions related to payments from the retirement plans' Supplemental Retiree Benefit Reserves (SRBR), and directed the City Attorney's Office to draft ordinances to amend the San Jose Municipal Code to temporarily suspend distributions from the SRBRs during Fiscal Year 2010-2011. Please refer to the attached Memorandum dated October 22, 2010. On November 9, 2010, the City Council approved the first reading of the ordinance for the Police and Fire Department Retirement Plan and approved sending a resolution to the Federated City Employees' Retirement System indicating that there would be no SRBR distribution from the retirement plan during Fiscal Year 2010-2011.

The Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System each have a Supplemental Retiree Benefit Reserve (SRBR) that provides a supplemental "13th check" benefit under certain conditions as specified in the San Jose Municipal Code. The 13th check is in addition to the monthly pension payments, disability and survivor benefits, annual 3% fixed cost of living adjustment (COLA) and retiree healthcare benefits eligible retirees receive.

As of June 30, 2010, the plans' unfunded liabilities for pension benefits totaled $1.43 billion. In addition, the plans had a $1.53 billion unfunded liability for other post employment benefits (OPEB). OPEB benefits include retiree healthcare benefits. Regardless of the unfunded liability in each plan, the SRBR can still result in the distribution of SRBR payments (13th check) to retirees.

In 2011, the City commenced negotiations with the majority of the bargaining groups and those discussions included retirement reform, including the SRBR program. As of the date of this memorandum, the City has reached agreements with five bargaining units[1], and those agreements include side letters to continue discussing the SRBR program. The remaining six bargaining groups are still pending.

In addition, as part of the Mayor's March Budget Message that was approved by the City Council on March 22, 2011, the City Manager was directed to present recommendations on May 2, 2011, to achieve $216 million per year of cost reductions and/or new revenues for the General Fund that will allow the City to restore services to the levels of January 1, 2011, within five years. The May 2, 2011, Fiscal Reform Plan, which is scheduled to be heard before the City Council on May 24, 2011, includes a recommendation to continue the suspension of the SRBR payments until January 1, 2012. However, to allow for sufficient time to complete the outreach

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[1] The City and the Association of Building, Mechanical and Electrical Inspectors (ABMEI) reached a Tentative Agreement on April 29, 2011. This Tentative Agreement has been ratified by ABMEI and subject to approval by the City Council.

and meet and confer process, to the extent required, the City Administration is recommending continuing the suspension through June 30, 2012.

Due to the plans' significant unfunded liabilities, recent agreements with five bargaining groups to continue the negotiations on the SRBR, to the extent required, and the recommendations set forth in the Fiscal Reform Report, it is recommended that the SRBR distributions continue to be suspended during Fiscal Year 2011-2012.

ANALYSIS

The SRBR in each retirement plan was established based on the concept that when the two retirement plans have "excess" earnings a portion of these "excess" earnings are used to provide a fund for additional benefits to retirees. Both the Federated City Employees' Retirement System and the Police and Fire Department Retirement Board currently assume a 7.75% rate of return.

Federated City Employees' Retirement System

In 1986, the City Council established the Supplemental Retiree Benefit Reserve (SRBR) in the Federated City Employees' Retirement System to allocate investment income earned by retirement fund assets that exceeds expected returns to an account that would fund new, or supplemental benefits for retirees. The SRBR was patterned on State legislation that had been adopted in 1983 to permit certain counties to do the same.

The San Jose Municipal Code sets forth a methodology for allocating funding to the SRBR and in 2003; the City Council adopted a Resolution establishing the current distribution methodology.

Under the section of the San Jose Municipal Code governing the Federated City Employees' Retirement System (SJMC§3.8.340), the City Council can make recommendations to the Board of Administration of the Federated City Employees' Retirement System regarding the distribution, if any from the Federated SRBR, and upon consideration of the recommendation of the Board, the City Council can determine the amount, if any, of the distribution to be made from the Federated SRBR.

The San Jose Municipal Code does not need to be amended to permit the City Council to implement a suspension of Federated SRBR payments. However, the Municipal Code does require the City Council to refer the recommendation for such suspension to the Board of Administration of the Federated City Employees' Retirement System, and to act after receipt of the Federated Board recommendation of such change in the distribution. It is recommended that the draft resolution be referred to the Board for its consideration at the June 16, 2011, board meeting and that the City Council consider the comments, if any, from the Board on June 21, 2011, and decide whether or not to suspend the distribution.

Police and Fire Department Retirement Plan

In 2001, the City Council adopted an ordinance establishing an SRBR program within the Police and Fire Department Retirement Plan.

Under the Section of the San Jose Municipal Code governing the Police and Fire Department Retirement Plan (SJMC§3.36.580), the Board of Administration for the Police and Fire Department Retirement Plan is charged with developing the methodology for distribution from the Police and Fire SRBR, and upon City Council approval of the methodology, the Police and Fire Board is charged with making a distribution in accordance with the methodology.

The San Jose Municipal Code does not specify how much should be distributed from the Police and Fire SRBR each year, but instead specifies limits on the amount that can be distributed.

In order to implement that there be no distribution from the Police and Fire SRBR during Fiscal Year 2011-2012, it is recommended that the San Jose Municipal Code be amended to suspend distribution until after June 30, 2011. Under San Jose Municipal Code Section 3.36.485, prior to the City Council adoption of any ordinance amending the Police and Fire Department Retirement Plan, the Board of Administration for the Police and Fire Retirement Plan is to be provided with sixty (60) days for review and comment on the proposed ordinance, unless the City Council finds that there is a need to adopt the ordinance within a time period which does not allow for a sixty day review period, in which case the City Council can adopt an urgency ordinance or when the ordinance is passed for publication of title, the City Council refers the ordinance to the Board for study and consideration and upon the recommendation, if any, from the Board, the City Council implements or disapproves the Board's recommendation. Because the distribution of the SRBR could occur before the sixty day review period, if the City Council wishes to ensure that no distribution occur during Fiscal Year 2011-2012, a finding that there is need to adopt the ordinance within a time period which does not allow for a sixty day review period should be made and the ordinance referred to the Board of Administration for the Police and Fire Department Retirement Plan for study and recommendation. If the Council receives a recommendation if any, from the Board, it could decide to reconsider the matter taking the Boards comments at such time.

Distribution Methodology

The distribution methodology for each plan is memorialized in Resolutions 71870 and 70822. Under the Federated distribution methodology, all retired members and survivors receive a disbursement when the plans' investment returns exceed expected returns. Under the Police and Fire distribution methodology, all retired members and survivors receive a disbursement, so long as the SRBR principal balance would not be reduced by the distribution. For both plans, the criteria for determining the payment amount is based on a "point" system. Retirees receive points based on years of service, number of years retired and final average salary. Under this methodology, the largest payments are made to retirees that have been retired the longest and have rendered the longest service to the City.

As of June 30, 2010, the SRBR balance for the Federated City Employees' Retirement System was $28.3 millioo and $32 million for the Police and Fire Department Retirement Plan. If the current suspension of distribution payments were lifted after June 30, 2011, the funds that could be distributed from the Police and Fire Department Retirement Plan are approximately $1 million and out of the Federated City Employees Retirement System, $5.6 million. This is a significant amount of money to distribute from the retirement plans considering the plans' significant unfunded liabilities.

The City will be engaged in retirement reform efforts with the bargaining units over the next several months. It is recommended that the City Council continue the suspension of the distribution of payments from the SRBR during Fiscal Year 2011-2012, while further discussions regarding retirement reform, including the SRBR program continue.

PUBLIC OUTREACH/INTEREST

☐ **Criterion 1:** Requires Council action on the use of public funds equal to $1 million or greater.
(Required: Website Posting)

☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This report will be posted on the internet and a copy will be sent to the bargaining unit representatives and the retiree associations as soon as the memo has been distributed.

COORDINATION

This memo has been coordinated with the City Attorney's Office.

CEQA

CEQA: Not a Project, File No. PP10-068(b), (Municipal Code or Policy, new or revised)

Debra Figone
City Manager

For questions please contact Alex Gurza, Director of Employee Relations, at 535-8155.

Attachment: Memorandum dated October 22, 2011

EXHIBIT 46

COUNCIL AGENDA: 04/24/12
ITEM:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Debra Figone

SUBJECT: Suspension of SRBR Payments

DATE: April 9, 2012

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

RECOMMENDATION

It is recommended that the City Council:

(a) Approve an ordinance amending Section 3.36.580 of Part 4 of Chapter 3.36 of Title 3 of the San Jose Municipal Code to continue to suspend the supplemental retiree benefit reserve distribution from the Police and Fire Retirement Plan for Fiscal Year 2011-2012 and provide that there shall be no supplemental retiree benefit reserve distribution from the Police and Fire Department Retirement Plan during Fiscal Year 2012-2013, upon a finding that is needed to adopt the ordinance within a time period which does not allow for a sixty day review period by the Board of Administration of the Police and Fire Department Retirement Plan under San Jose Municipal Code Section 3.36.485.A., and refer the ordinance to the Board for study and consideration pursuant to San Jose Municipal Code Section 3.36.485.B; and

(b) Direct staff to forward for review by the Board of Administration of the Federated City Employees' Retirement Plan a draft resolution amending and restating Resolution No. 75635 to continue to suspend the supplemental retiree benefit reserve distribution from the Federated City Employees' Retirement Plan for Fiscal Year 2011-2012 and provide that there shall be no supplemental retiree benefit reserve distribution from the Federated City Employees' Retirement Plan during Fiscal Year 2012-2013.

OUTCOME

Approval of the recommendation will continue to suspend the supplemental retiree benefit reserve distribution from the Police and Fire Retirement Plan and the Federated City Employees' Retirement Plan for Fiscal Year 2011-2012 and the suspension of the Supplemental Retiree Benefit Reserve payments from the City's Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System during Fiscal Year 2012-2013.

GURZA000728

EXECUTIVE SUMMARY

The Supplemental Retiree Benefit Reserve (SRBR) in each Plan provides a supplemental "13th check" benefit under certain conditions as specified in the Municipal Code. The 13th check is in addition to the monthly pension payments, disability and survivor benefits, annual 3% fixed cost of living adjustment (COLA) and retiree healthcare benefits eligible retirees receive.

Based on the SRBR distribution provisions currently specified in the Code, it is anticipated that there will be a distribution of payments to retirees from both the Federated City Employees' Retirement System and Police and Fire Department Retirement Plan in Fiscal Year 2012-2013 once the suspension ends for Fiscal Year 2011-2012, pending the outcome of the June 2012 election. The amount of distribution from both plans is estimated to be approximately $7.86 million.

As of June 30, 2011, the plans' unfunded liabilities for pension benefits totaled $1.492 billion. In addition, the Federated plan has an $800.5 million unfunded liability for Other Post Employment Benefits (OPEB) and the Police and Fire plan has a $596.7 million unfunded liability. OPEB benefits include retiree healthcare benefits. Regardless of the unfunded liability in each plan, the SRBR can still result in the distribution of SRBR payments (13th check) to retirees.

On October 26, 2010, the City Council approved to temporarily suspend the Supplemental Retiree Benefit Reserves (SRBR) payments during Fiscal Year 2010-2011. On May 17, 2011, the City Council approved actions to continue this suspension for Fiscal Year 2011-2012.

On March 6, 2012, the City Council approved a ballot measure for the June 2012, election that would include various proposed changes to the Charter regarding retirement benefits. The ballot measure, if passed by the voters, would eliminate the SRBR for both the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System.

Due to the plans' significant unfunded liabilities and the pending outcome of the June 2012, election, it is recommended that the SRBR distributions continue to be suspended for Fiscal Year 2012-2013.

BACKGROUND

On October 26, 2010, the City Council approved to temporarily suspend the Supplemental Retiree Benefit Reserves (SRBR) payments during Fiscal Year 2010-2011. On May 17, 2011, the City Council approved actions to continue this suspension for Fiscal Year 2011-2012.

On March 6, 2012, the City Council approved a ballot measure for the June 2012, election that would include various proposed changes to the Charter regarding retirement benefits. As part of the direction, the City Council requested that the City's negotiation team invite all bargaining groups to re-engage in mediation regarding all retirement issues, including the related ballot measure. The ballot measure, if passed by the voters, includes a provision that would eliminate the SRBR for both the Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System.

ANALYSIS

Federated City Employees' Retirement System

In 1986, the City Council established the Supplemental Retiree Benefit Reserve (SRBR) in the Federated City Employees' Retirement System to allocate investment income earned by retirement fund assets that exceeds expected returns to an account that would fund new, or supplemental, benefits for retirees. The SRBR was patterned on State legislation that had been adopted in 1983 to permit certain counties to do the same.

The Municipal Code sets forth a methodology for allocating funding to the SRBR but does not set forth a methodology for distributing the money in the SRBR to the Federated retirees[1]. (Attachment A) In 2003, the City Council adopted a Resolution establishing the current distribution methodology.[2] (Attachment B)

Under the section of the San Jose Municipal Code governing the Federated City Employees' Retirement System (SJMC§3.8.340), the City Council can make recommendations to the Board of Administration of the Federated City Employees' Retirement System regarding the distribution, if any from the Federated SRBR, and upon consideration of the recommendation of the Board, the City Council can determine the amount, if any, of the distribution to be made from the Federated SRBR.

The San Jose Municipal Code does not need to be amended to permit the City Council to implement a suspension of Federated SRBR payments. However, the Municipal Code does require the City Council to refer the recommendation for such suspension to the Board of Administration of the Federated City Employees' Retirement System, and to act after receipt of the Federated Board recommendation of such change in the distribution. It is recommended that the draft resolution be referred to the Board for its consideration at the April 19, 2012, board meeting and that the City Council consider the comments, if any, from the Board on April 24, 2012, and decide whether or not to suspend the distribution. The Resolution would return to the City Council for final approval on May 22, 2012.

Police and Fire Department Retirement Plan

In 2001, the City Council adopted an ordinance establishing an SRBR program within the Police and Fire Department Retirement Plan.[3] (Attachment C)

In 2002, the Council adopted a Resolution approving the methodology for distribution of moneys from the Police and Fire SRBR to all retired members and survivors.[4] (Attachment D)

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[1] San Jose Municipal Code Section 3.28.340B
[2] Resolution No. 71870
[3] San Jose Municipal Code Section 3.36.580
[4] Resolution No. 70822

In order to implement that there be no distribution from the Police and Fire SRBR during Fiscal Year 2012-2013, it is recommended that the San Jose Municipal Code be amended to suspend distribution until after June 30, 2012. Under San Jose Municipal Code Section 3.36.485, prior to the City Council adoption of any ordinance amending the Police and Fire Department Retirement Plan, the Board of Administration for the Police and Fire Department Retirement Plan is to be provided within sixty (60) days for review and comment on the proposed ordinance, unless the City Council finds that there is a need to adopt the ordinance within a time period which does not allow for a sixty day review period, in which case the City Council can adopt an urgency ordinance or when the ordinance is passed for publication of title, the City Council refers the ordinance to the Board for study and consideration and upon the recommendation, if any, from the Board, the City Council implements or disapproves the Board's recommendation. Because the distribution of the SRBR could occur before the sixty day review period, if the City Council wishes to ensure that no distribution occur during Fiscal Year 2012-2013, a finding that there is need to adopt the ordinance within a time period which does not allow for a sixty day review period should be made and the ordinance referred to the Board of Administration for the Police and Fire Department Retirement Plan for study and recommendation. If the Council receives a recommendation if any, from the Board, it could decide to reconsider the matter taking the Boards comments at such time. The second reading of the ordinance will be considered by the City Council on May 22, 2012.

Distribution Methodology

The distribution methodology for each plan is memorialized in Resolutions 71370 and 70822. Under the Federated distribution methodology, all retired members and survivors receive a disbursement when the plans' investment returns exceed expected returns. Under the Police and Fire distribution methodology, all retired members and survivors receive a disbursement, so long as the SRBR principal balance would not be reduced by the distribution. For both plans, the criteria for determining the payment amount is based on a "point" system. Retirees receive points based on years of service, number of years retired and final average salary. Under this methodology, the largest payments are made to retirees that have been retired the longest and have rendered the longest service to the City.

The SRBR in each retirement plan was established based on the concept that when the two retirement plans have "excess" earnings a portion of these "excess" earnings are used to provide a fund for additional benefits to retirees. The Federated City Employees' Retirement System assumes a 7.50% return. The Police and Fire Department Retirement Plan recently approved lowering the assumed rate of return to 7.50%. When the plans actual investment returns exceed the expected returns, a portion of these "excess earnings" is transferred into the SRBR.

However, the Board's actuaries have numerous assumptions including economic and non-economic factors such as salary growth, expected retirements, and mortality rates. When the Plans do not meet these assumptions, it results in an unfunded liability. As previously indicated, the City, and ultimately taxpayers are responsible for 100% of any unfunded pension liability. This is also the case when the investment returns do not meet the assumed rate of return adopted by the boards. The City has been experiencing significant increases in retirement contributions. This is due to investment losses in prior years, granting of retroactive benefit enhancements and the assumptions used by the plans' actuaries to calculate liabilities and contribution rates not holding true.

Both the Federated City Employees' Retirement System and Police and Fire Department Retirement Plan had investment returns as of June 30, 2011, that exceeded the assumed rate of return for each plan. As a result, it is anticipated that the SRBR distributions will be made to retirees even though the Plans have a significant unfunded liability. The following chart provides the balance in the SRBR as of June 30, 2011.

Retirement Plan	SRBR Balance
Federated	$30,583,315
Police & Fire	$33,416,870

The retirement boards' actuary has calculated that the following amounts would be available for distribution to retirees.

Retirement Plan	Amount of Distribution
Federated	$6.387 million
Police and Fire	$1.281 million

Under the Municipal Code and the SRBR distribution resolutions, distributions could occur as early as July 1, 2012, after the Boards' declaration of "excess" earnings.

Due to the rising increases in retirement costs, the City Council approved a ballot measure on March 6, 2012, that would include various proposed changes to the Charter regarding retirement benefits. The ballot measure includes a provision that would eliminate the SRBR if passed by the voters.

The SRBR payments are only temporarily suspended through June 30, 2012. Therefore, it is possible that distribution of SRBR payments could be made as early as July 1, 2012. If the ballot measure, as approved by the City Council, is placed on the June 2012, election, it is expected that the certified results would not be available until after July 1, 2012.

It is recommended that the City Council continue to suspend the supplemental retiree benefit reserve distribution during Fiscal Year 2012-2013, pending the results of the June 2012 election.

PUBLIC OUTREACH/INTEREST

☐ Criterion 1: Requires Council action on the use of public funds equal to $1 million or greater.
(Required: Website Posting)

☐ Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)

☐ Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

This report will be posted on the internet and a copy will be sent to the bargaining unit representatives and the retiree associations as soon as the memo has been distributed.

COORDINATION

This memo has been coordinated with the City Attorney's Office.

CEQA

CEQA: Not a Project, File No. PP10-068(b), (Municipal Code or Policy, new or revised)

Debra Figone
City Manager

For questions please contact Alex Gurza, Deputy City Manager, at 535-8155.

Attachment A: San Jose Municipal Code Section 3.28.340B
Attachment B: Resolution No. 71870
Attachment C: San Jose Municipal Code Section 3.36.580
Attachment D: Resolution No. 70822

EXHIBIT 47

4.29

CHEIRON Classic Values, Innovative Advice

January 13, 2012

VIA ELECTRONIC MAIL

Mr. Russell U. Crosby
Director of Retirement Services
City of San Jose Department of Retirement Services
1737 North 1st Street, Suite 580
San Jose, California 95112

Re: Federated Employees Retirement Plan
Supplemental Retiree Benefit Reserve as of June 30, 2011

Dear Russell:

We have calculated the balance of the Supplemental Retiree Benefit Reserve (SRBR) as of June 30, 2011, including the amount of interest to be credited as of June 30, 2011, the amount of "excess earnings" to be transferred on July 1, 2011, and the amount to be distributed in 2011. These calculations have been performed in accordance with our understanding of San Jose Municipal Code Section 3.28.340. We understand the City Council has suspended distributions. This letter shows what the distributions would be if Council re-instates distributions following the same policy as outlined in Council Resolution #71870. In addition, the interest crediting formulas shown in the memorandum dated February 11, 2009 from Carmen Racy-Choy and Veronica Niebla to the Board of Administration have been modified to reflect the actual timing of City contributions and to be consistent with the investment return calculations shown in the actuarial valuation.

The table below summarizes the results of our calculations:

SRBR Interest Credit, 6/30/2011	$ 2,252,315
SRBR Excess Earnings Credit, 7/1/2011	$ 12,526,036
2011 SRBR Distribution	$ 6,587,315

Interest Crediting

San Jose Municipal Code Section 3.28.340 describes how interest is credited to the Employee, SRBR, and General Reserves in the Retirement Fund. The basic process is as follows:

1. The Employee Reserve is credited with interest semi-annually at an annual rate of 3.0%. These calculations are performed by the Department of Retirement Systems.
2. The SRBR and General Reserves are credited with interest at the lower of the actuarially assumed rate or the actual rate of earnings for the year. While not explicit in the Municipal Code, we understand that the phrase "interest credited" has been historically interpreted to be not less than zero.

FCERS 01-19-12

GURZA000734

3. The General Reserve is credited with the excess, if any, of the interest that would have been credited to the Employee Reserve following the procedure under (2) and the actual amount credited under (1).
4. Any positive earnings remaining are considered "Excess Earnings." Ten percent of the Excess Earnings are credited to the SRBR effective July 1, and the remainder is credited to the General Reserve.
5. Any negative earnings remaining are charged to the General Reserve.

The Medical Benefits account and the Cost-of-Living Fund are maintained separately and are not affected by the calculations described above.

The table below shows the calculation of the interest credits and Excess Earnings. For this purpose, the dollar amount of interest is calculated based on the interest rate (i) as follows:

$$\text{Interest} = \text{Beginning of year balance and cash flow} \times i + \text{mid-year cash flow} \times i \div 2$$

This formula is a change from prior years. The prior formula was as follows:

$$\text{Interest} = (\text{Beginning of year balance} \times i + \text{cash flow} \times i \div 2) \div (1 - i \div 2)$$

The change in formula results in an increase in the total Excess Earnings of approximately $2.6 million and an offsetting decrease in the Primary Interest Crediting. For the SRBR, the change results in approximately a $100,000 decrease in Primary Interest Crediting and a $260,000 increase in Excess Earnings. The attachment to this letter provides additional detail on the change in formulas.

The interest is credited effective June 30, 2011 and the Excess Earnings are credited effective July 1, 2011.

	Employee	SRBR	General	Total
Total Earnings				$ 213,159,048
Balance, July 1, 2010	$ 201,166,486	$ 28,331,000	$ 878,824,368	$ 1,108,321,854
Net Cashflow				
Beginning of Year	$ 0	$ 0	$ 33,410,021	$ 33,410,021
Middle of Year	(13,906,729)	0	(58,269,263)	(72,175,992)
End of Year	0	0	8,769,954	8,769,954
Total Net Cashflow	$ (13,906,729)	$ 0	$ (16,089,288)	$ (29,996,017)
Crediting Rate		7.95%	7.95%	
Primary Interest Crediting	5,561,930	2,252,315	80,084,444	87,898,689
Balance, June 30, 2011	$ 192,821,687	$ 30,583,315	$ 942,819,524	$ 1,166,224,526
Excess Earnings	0	12,526,036	112,734,323	125,260,359
Balance, July 1, 2011	$ 192,821,687	$ 43,109,351	$ 1,055,553,847	$ 1,291,484,885

SRBR Distributions

When Excess Earnings are transferred to the SRBR pursuant to the Municipal Code, it increases the Actuarial Liability as it is assumed these amounts will ultimately be distributed to retirees and beneficiaries. However, payments are not paid to retirees and beneficiaries until a distribution is ordered by the Board. While the City Council has suspended distributions from the SRBR, following our understanding of Council Resolution #71870 and the accompanying memorandum dated November 24, 2003, distributions would be made from the SRBR in the amount of the interest credited to the SRBR plus the balance in the SRBR that exceeds the minimum balance defined by the Board. For this purpose the balance in the SRBR is the balance before interest crediting and before the Excess Earnings are transferred. The minimum balance is equal to $7,000 multiplied by the number of retirees and beneficiaries who would receive a portion of the distribution.

The table below shows the calculation of the distribution if the City Council re-instates SRBR distributions following the policy in Council Resolution #71870.

1	SRBR Balance FYE 2010	$	21,381,000
2	Previous Year's Excess Earnings	$	6,950,000
3	Current Year Interest	$	2,252,315
4	SRBR Distribution FYE 2011 of FYE 2010 earnings	$	-
5	SRBR Balance FYE 2011 (1+2+4)	$	28,331,000
6	Minimum Balance ($7000 x 3,428)	$	23,996,000
7	SRBR Distribution FYE 2012 [3 + (5-6, not less than $0)]	$	6,587,315

If you have any questions or would like to discuss these calculations, please call me at (703) 893-1456 extension 1113 or Anne Harper at extension 1107.

Sincerely,
Cheiron

William R. Hallmark

William R. Hallmark, ASA, FCA, EA, MAAA
Consulting Actuary

Anne Harper

Anne D. Harper, EA, MAAA
Associate Actuary

Attachment

cc: Carmen Racy-Choy
Veronica Niebla

ATTACHMENT
Interest Crediting Formulas

Comparison of Interest Crediting Formulas

Notation

I = Interest credited in dollars
i = Interest crediting rate
A = Beginning balance
B = Ending balance
CFA = Cash flows at beginning of period (i.e., City pre-paid contributions)
CFM = Cash flows throughout the period (i.e., member contributions and benefit payments)
CFB = Cash flows at end of period (i.e., City true-up contributions)

Prior formula based on average balance during year including earnings

$$I = i \times (A + B) \div 2$$
$$I = (i \times (A + (CFA + CFM + CFB) \div 2) \div (1 - i \div 2)$$

New formula based on timing of City contributions

$$I = i \times (A + CFA + CFM \div 2)$$

Hypothetical Example

Assumptions
i = 10%
A = $1,000
CF-A = $30
CF-M = ($40)
CF-B = $10

The net cash flow for the year is $0 ($30 - $40 + $10), so the average balance method produces $105 in earnings (10% x $1,000 ÷ 95%).

However, the new method based on timing of City contributions only produces $101 in earnings (10% x ($1,000 + 30 – 40 ÷ 2)).

So, if our assumed earnings rate was 10% in this hypothetical example, under the prior method the plan would have to get $105 in earnings before there was any Excess Earnings, but under the new method the plan would only have to get $101 in earnings before there was any Excess Earnings.

The table below summarizes the results of the SRBR calculations under the prior method.

SRBR Interest Credit, 6/30/2011	$ 2,345,550
SRBR Excess Earnings Credit, 7/1/2011	$ 12,264,174
2011 SRBR Distribution	$ 6,680,550

EXHIBIT 48

2.4a

CHEIRON Classic Values, Innovative Advice

March 29, 2012

VIA ELECTRONIC MAIL

Mr. Russell Crosby, Executive Director
Department of Retirement Services
1737 North 1st Street, Suite 580
San Jose, California 95112

Re: City of San Jose Police and Fire Department Retirement Plan Supplemental Retiree Benefit Reserve as of June 30, 2011

Dear Russell:

The purpose of this letter is to provide the Board with a review of the calculation of the balance of the Supplemental Retiree Benefit Reserve (SRBR) as of June 30, 2011, including the amount of interest to be credited as of June 30, 2011, the amount of "excess earnings" to be transferred on July 1, 2011, the amount to be distributed in 2011, and the charge to the SRBR to offset the City's contribution on July 1, 2012. These calculations have been performed in accordance with our understanding of San Jose Municipal Code (SJMC) Section 3.36.580 and have been previously provided to the Board as part of our June 30, 2011 actuarial valuation report. We refer you to that report for a description of the data, assumptions, methodology, and plan provisions applicable to these calculations.

The table below summarizes the results of our calculations:

SRBR Interest Credit, 6/30/2011	$ 1,281,464
SRBR Excess Earnings Credit, 7/1/2011	$ 0
2011-12 SRBR Distribution	$ 1,281,464
Charge to SRBR for FYE 2013	$ 848,379
Decrease in City's contribuiton rate for 2012-13 due to Charge	0.46%

SRBR Crediting

SJMC Section 3.36.580 describes how Interest Credits and Excess Earnings Credits are calculated and transferred to the SRBR. The basic process is as follows:

1. Interest Credits - Each June 30, the investment earnings attributable to the balance in the SRBR is allocated to the SRBR. The amount of investment earnings is calculated using the same methodology that is used to determine the actuarial value of assets for the actuarial valuation. That is, investment returns are based on the change in the smoothed actuarial value of assets adjusted for the approximate timing of contributions and benefit payments during the year. In no case is the amount allocated to the SRBR less than zero.

121 SW Salmon Street, 11th Floor, Portland, OR 97204 Tel: 877.243.4766 Fax: 703.893.2006 www.cheiron.us

PF 04-05-12
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2. Excess Earnings Credits - Ten percent of any smoothed investment earnings above the assumed investment return on the actuarial value of non-SRBR assets is transferred to the SRBR. The transfer is deemed to take place on July 1 following the valuation date.

Based on the June 30, 2011 Actuarial Valuation the investment return on the actuarial value of assets was below the assumed investment return of 7.75% so the Excess Earnings Credit is zero for this year. Given the investment return of 3.9877% and an average annual SRBR balance of $32,135,406, the Interest Credit is $1,281,464.

SRBR Distributions

Benefit distributions from the SRBR in a given year have been based on the Interest Credit from the prior year's valuation. Since the Interest Credit for the SRBR in the June 30, 2011 Actuarial Valuation is $1,281,464, the benefit distributions from the SRBR during 2011-2012 would also be $1,281,464. However, SJMC Section 3.36.580(D)(2) prohibits distributions from the SRBR between January 1, 2010 and June 30, 2012. Table 1 below shows the SRBR distributions for each valuation year that have not yet been distributed in case they can be distributed after June 30, 2012.

Table 1

SRBR Regular Interest Credits Not Yet Distributed

Valuation Year	Interest Credit
2008-09	$ 296,147
2009-10	719,742
2010-11	1,281,464
Total	$ 2,297,353

SRBR Charges

When the City's contribution rate increases due to poor investment earnings, there is a charge to the SRBR that partially offsets the City's rate increase. This charge is the minimum of (a) five percent of the SRBR balance at the end of the year and (b) ten percent of the increase to the City's dollar contribution due to the investment loss. Since the City makes its contribution at the beginning of the year, it is assumed that the transfer happens on July 1 of the fiscal year in which the increase in contribution rates occurs. For the 2010-2011 fiscal year the SRBR charge was $1,207,958, and for the 2011-2012 fiscal year, the charge was $1,285,087. Table 2 below shows the calculation of the charge to the SRBR and the offset to the City's contribution rate for the 2012-13 fiscal year.

Table 2 Calculation of Charge to SRBR for FYE 2013	
1. Increase in UAL due to investment loss in 2010-11	$ 96,472,852
2. Amortization factor	8.794%
3. Increase in City's dollar contribution as of July 1, 2012 [1 ÷ 2]	$ 8,483,790
4. SRBR balance as of June 30, 2011	$ 33,416,870
5. Charge to SRBR on July 1, 2012 [minimum of 10% of 3 and 5% of 4]	$ 848,379
6. Projected 2012-13 payroll	$ 190,726,258
7. Decrease in City's contribution rate for 2012-13 [(5 x 1.075^0.5) ÷ 6]	0.46%

SRBR Reconciliaton

Table 3 below shows a reconciliation of the SRBR for the past two years.

Table 3 Changes in Supplemental Retiree Benefit Reserve	June 30, 2011	June 30, 2010
SRBR Balance, beginning of year	$ 33,343,364	$ 32,623,622
Charge to SRBR for poor investment earnings	(1,207,958)	0
Interest credited	1,281,464	719,742
Excess earnings transferred	0	0
Benefit distributions	0	0
SRBR Balance, end of year	$ 33,416,870	$ 33,343,364

This letter was prepared exclusively for the Board of the City of San Jose Police & Fire Department Retirement Plan for the purpose of reviewing the SRBR calculations previously reported as part of the June 30, 2011 actuarial valuation. It has been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with the Code of Professional Conduct and applicable Actuarial Standards of Practice set out by the Actuarial Standards Board. Furthermore, as credentialed actuaries, we meet the Qualification Standards of the American Academy of Actuaries to render the option contained in this letter. This letter does not address any contractual or legal issues. We are not attorneys and our firm does not provide any legal services or advice. This letter is not intended to benefit any third party, and Cheiron assumes no duty or liability to any such party.

If you have any questions or would like to discuss these calculations, please call Bill at (703) 893-1456 extension 1113.

Sincerely,
Cheiron

William R. Hallmark, ASA, FCA, EA, MAAA
Consulting Actuary

Joshua A. C. Davis, FSA, EA, MAAA
Consulting Actuary

cc: Carmen Racy-Choy
Veronica Niebla
Gene Kalwarski

EXHIBIT 49

CITY PROPOSAL – SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

Proposed Language:

As soon as practicable, the Supplemental Retiree Benefit Reserve (SRBR) will be eliminated and the funds set aside for the SRBR will be put back into the Federated City Employees' Retirement System Fund.

FOR CITY:

Gina Donnelly

08/23/11

FOR UNION:

RICHARD HICKS

8-23-11

EXHIBIT 50

2011 CITY OF SAN JOSE – IBEW TENTATIVE AGREEMENT

CITY PROPOSAL – SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

Proposed Language:

As soon as practicable, the Supplemental Retiree Benefit Reserve (SRBR) will be eliminated and the funds set aside for the SRBR will be put back into the Federated City Employees' Retirement System Fund.

FOR CITY:

Gina Donnelly

08/23/11

FOR UNION:

Frank Curran : I.B.E.W. 8-23-2011

GURZA000744

EXHIBIT 51

2011 CITY OF SAN JOSE – OE#3 - Tentative Agreement

CITY PROPOSAL – SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

Proposed Language:

As soon as practicable, the Supplemental Retiree Benefit Reserve (SRBR) will be eliminated and the funds set aside for the SRBR will be put back into the Federated City Employees' Retirement System Fund.

FOR CITY:

Gina Donnelly

08/28/11

FOR UNION:

GURZA000745

EXHIBIT 52

CITY PROPOSAL – SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

Proposed Language:

As soon as practicable, the Supplemental Retiree Benefit Reserve (SRBR) will be eliminated and the funds set aside for the SRBR will be put back into the Federated City Employees' Retirement System Fund.

FOR CITY:

Gina Donnelly

08/23/11

FOR UNION

8/23/11

LAVERNE S. WASHINGTON
AFSCME
CONFIDENTIAL EMPLOYEES ORGANIZATION

EXHIBIT 53

2011 CITY OF SAN JOSE – MEF – Tentative Agreement

CITY PROPOSAL – SUPPLEMENTAL RETIREE BENEFIT RESERVE (SRBR)

Proposed Language:

As soon as practicable, the Supplemental Retiree Benefit Reserve (SRBR) will be eliminated and the funds set aside for the SRBR will be put back into the Federated City Employees' Retirement System Fund.

FOR CITY:

Gina Donnelly

08/23/11

FOR UNION:

Yolanda G. Cruz
8/23/11
Yolanda A. Cruz
MEF, AFSCME Local 101
President

GURZA000747

EXHIBIT 54

CITY OF SAN JOSÉ, CALIFORNIA

City Clerk

Office of the City Clerk
200 East Santa Clara Street
San José, California 95113
Telephone (408) 535-1260
FAX (408) 292-6207

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSÉ)

I, Dennis D. Hawkins, City Clerk & Ex-Officio Clerk of the Council of and for the City of San José, in said County of Santa Clara, and State of California, do hereby certify that **Ordinance No. 29174,** the original copy of which is attached hereto, was passed for publication of title on the **6th of November 2012,** was published in accordance with the provisions of the Charter of the City of San José, and was given final reading and adopted on the **4th day of December, 2012** by the following vote:

AYES:	CONSTANT, HERRERA, LICCARDO, NGUYEN, OLIVERIO, ROCHA; REED.
NOES:	CAMPOS, CHU, KALRA, PYLE.
ABSENT:	NONE.
ABSTAINED:	NONE.
VACANT:	NONE.

Said ordinance is effective as of **January 4, 2013.**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San José, this **12th day of December 2012.**

(SEAL)

DENNIS D. HAWKINS
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/smd

ORDINANCE NO. 29174

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF CHAPTER 3.28 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THE CITY CHARTER SUPERSEDES THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN IN EVENT OF CONFLICT, CLARIFY THE DEFINITION OF TIER 2 MEMBER, DISCONTINUE THE SUPPLEMENTAL RETIREE BENEFIT RESERVE, CLARIFY ACTUARIAL SOUNDNESS IS DETERMINED CONSISTENT WITH THE CALIFORNIA CONSTITUTION, AND MAKE ADDITIONAL REQUIREMENTS FOR MANDATORY MEDICARE ENROLLMENT, TO BE EFFECTIVE JANUARY 4, 2013

WHEREAS, the City of San José ("City") wishes to further implement the provisions of Article XV-A of the City's Charter and clarify that in the event of conflict between the provisions of Article XV-A of the City's Charter and the Federated City Employees Retirement Plan, the City's Charter controls; and

WHEREAS, the City wishes to clarify that certain employees who participate in a City sponsored defined contribution plan will be excluded from participation in the Federated City Employees Retirement Plan; and

WHEREAS, the City wishes to discontinue use of the Supplemental Retiree Benefit Reserve; and

WHEREAS, the City wishes to clarify that the actuarial soundness of the Federated City Employees Retirement Plan is determined in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act"); and

WHEREAS, the City wishes to make additional requirements relating to mandatory enrollment of Federated City Employees Retirement Plan members into Medicare;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 3.28.010 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.010 Plan Established - Name - Scope

A. There is hereby established a retirement plan for all persons, hereinafter in this chapter specified, who may become members thereof pursuant to the provisions of this chapter. This plan shall be known as the "1975 Federated City Employees Retirement Plan," and includes all provisions of this Chapter 3.28.

B. Notwithstanding any provision of the code to the contrary, the elements of the retirement plan as set out in Chapters 3.16, 3.20, 3.24 and 3.28 are components of a single retirement system known as the Federated City Employees Retirement Plan.

C. Contributions made by the City and the members of the plan to the retirement fund described in Part 3 of this Chapter shall be made for the purpose of distributing to such members or their beneficiaries the corpus and income of the fund in accordance with the terms of this plan.

D. The Federated City Employees Retirement Plan is established as a qualified governmental defined benefit plan pursuant to Sections 401(a) and 414(d) of the Internal Revenue Code or such other provision of the Internal Revenue Code as applicable and applicable treasury regulations and other guidance of the internal revenue service. The board shall be authorized to adopt rules and regulations which are appropriate or necessary to maintain the qualified status of the plan.

E. Effective September 30, 2012, the Federated City Employees Retirement Plan has been amended to provide for different retirement benefits for individuals hired or rehired by the City on and after that date. Members subject to these new benefit provisions are referred to in this chapter as Tier 2 members.

F. Under the City Council' authority pursuant to Article XV, Section 1500 of the City Charter, the provisions of Article XV-A of the City Charter are hereby implemented into the San José Municipal Code. To the extent there is any conflict between Article XV-A of the City of San José's Charter and the provisions of the Federated City Employees' Retirement System, Article XV-A will supersede any conflicting provision in the Federated City Employees' Retirement System, except as provided in Section 3.28.350.B

SECTION 2. Section 3.28.030.28 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.030.28 Tier 2 Member

"Tier 2 member" means any person who is hired, rehired or reinstated by the City on or after September 30, 2012 except for any person who is eligible and elects to participate in a defined contribution plan established under the San José Municipal Code.

SECTION 3. Section 3.28.070 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.070 Termination of Plan

A. Upon the termination of this plan or upon the complete discontinuance of contributions under the plan, the rights of each member, former member and beneficiary to benefits accrued to the date of such termination or discontinuance, to the extent then funded, shall be Nonforfeitable.

B. Upon the termination of this plan, the board shall perform all of the following:

1. Liquidate the assets of the retirement fund.

2. Pay all of the accrued administrative expenses of the plan, including the expenses of liquidation.

3. Determine the rights of each member, former member and beneficiary to benefits accrued to the date of termination, and ensure that all such benefits have been or are paid to the respective persons.

C. Upon the termination of this plan and the satisfaction of all liabilities described in Subsection B. above, the board shall allocate any remaining assets of the retirement fund to the members of the plan on the basis of years of service and final compensation credited to the member at the time of termination of the plan.

SECTION 4. Section 3.28.340 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.340 Disposition of Earnings

A. Definitions. For the purpose of this Section 3.28.340, the terms listed herein shall have the following meanings:

1. "Income account" means the account established in the general reserve pursuant to subsection B. below.

2. "Interest crediting rate" means the interest rate determined by the board for crediting the employee contribution reserve.

B. Retirement fund reserves. There shall be established in the retirement fund the following reserves:

1. The employee contribution reserve.

a. The board shall credit to the employee contribution reserve all contributions made by members of the retirement system and all interest payable pursuant to subsection C. below.

b. Moneys in the employee contribution reserve shall be available for the payment of benefits and for the return of contributions pursuant to Section 3.28.780.

2. The general reserve.

a. The board shall establish an income account and shall credit the income account with all rents, interest, dividends, realized gains and losses, unrealized gains and losses, and all other income other than employer contributions, received during the fiscal year. The board shall pay from the income account all expenses and administrative costs as they are incurred.

b. The board shall credit to the general reserve all contributions made by the City, all interest payable pursuant to subsection C. below, and that portion of the excess earnings determined pursuant to subsection D. below.

c. Moneys in the general reserve shall be available for the payment of benefits and for the payment of the expenses and administrative costs of the retirement system.

3. Such other reserves as the board may determine from time to time.

C. Credit to contributions and reserves. All interest credited pursuant to this subsection C. shall be deducted from the income account.

1. Interest shall be credited to the employee contribution reserve on a semi-annual basis, or more frequently if authorized by the board, at the interest crediting rate.

2. Interest shall be credited to the general reserve as follows:

a. Interest at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower; plus

b. Interest calculated as the difference between (i) the interest that would have been credited to the employee contribution reserve had the employee contribution reserve been credited at the actuarially assumed annual rate of return adopted by the board pursuant to Section 3.28.200 or at the actual rate of return earned by the retirement fund during the applicable fiscal year, whichever is lower, and (ii) the interest actually credited to the employee contribution reserve pursuant to subsection C.1. above; provided, however, that there shall be no offset to the general reserve in any case where this difference is a negative number.

D. Excess earnings.

1. Within ninety (90) days from and after receipt of audit reports for each fiscal year, the board shall determine the balance remaining in the income account after crediting of interest as provided in subsection C. above, and after payment of administrative costs and expenses of the retirement system for the applicable fiscal year.

2. If the balance remaining in the income account is greater than zero, the board shall by written resolution declare that balance to be the excess earnings for the applicable fiscal year, shall transfer the excess earnings to the general reserve. If the balance remaining in the income account is less than or equal to zero, the board by written resolution shall declare that there are no excess earnings and shall adjust the general reserve to reflect any negative balance in the income account so that the balance in the income account is zero as of the beginning of each fiscal year.

<u>SECTION 5.</u> Section 3.28.350 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.350 <u>Investment of Funds - Conditions and Limitations</u>

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

A. The assets of the retirement plan are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the plan. The assets of the retirement plan must not revert, and no contributions shall be permitted to be returned to the employers, except as permitted by Revenue Ruling 91-4.

B. The board shall discharge its duties with respect to the plan solely in the interest of, and for the exclusive purposes of providing benefits to, members of the plan and their beneficiaries, maintaining the actuarial soundness of the plan in a manner consistent with Article XVI, Section 17 of the California Constitution (the "1992 California Pension Protection Act"), and defraying reasonable expenses of administering the plan. The board's duty to the members and their beneficiaries shall take precedence over any other duty.

C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.

D. The board shall diversify the investments of the plan so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances, it is clearly prudent not to do so.

E. The retirement plan may participate under Section 401(a)(24) of the Internal Revenue Code in a qualified group trust that meets the requirements of Section 401(a) of the Internal Revenue Code in accordance with Revenue Ruling 81-100, as amended by Revenue Ruling 2004-67.

<u>SECTION 6.</u> Section 3.28.1970 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.1970 Requirements for Participation in Medical Insurance Plan

A. A member, as specified in Section 3.28.1950, above, is eligible to participate in a medical insurance plan sponsored by the City provided that the member satisfies the following requirements:

1. The member retires for service or disability pursuant to the provisions of this chapter; and

2. The member applies for medical insurance coverage at the time of his or her retirement in accordance with the provisions of the medical insurance plan, and agrees to pay any applicable premiums.

B. A survivor, as specified in Section 3.28.1960, above, is eligible to participate in a medical insurance plan sponsored by the City provided that the following conditions are satisfied:

1. The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the city or died after he or she terminated City employment and was retired pursuant to the provisions of this chapter; and

2. At the time of the member's death, the member and the survivor were enrolled in one of the medical insurance plans sponsored by the City; and

3. The survivor applies to continue medical insurance coverage at the time of the member's death, and agrees to pay any applicable premiums.

C. A member may secure medical insurance coverage for a spouse only if the spouse and member were married at the time of said member's retirement for service or disability.

D. A member may secure medical insurance coverage for a domestic partner only if the domestic partner and member had established a registered domestic partnership pursuant to Division 2.5 of the California Family Code or had formed a legal union other than a marriage that is recognized as a domestic partnership pursuant to California Family Code Section 299.2 at the time of said member's retirement for service or disability.

E. A surviving spouse or surviving domestic partner shall be eligible for single coverage only, except as follows:

1. A surviving spouse or surviving domestic partner shall be eligible for family coverage if at least one surviving child as defined in Section 3.28.1460.D., or at least one child of the surviving spouse or surviving domestic partner who is unmarried, not a member of a registered domestic partnership and under the age of eighteen years, or an eligible surviving child for purposes of receiving a school allowance as defined in Section 3.28.1750, is surviving the death of a member; in such case, if such child was enrolled in a medical insurance plan sponsored by the City at the time of the member's death.

2. A surviving spouse or surviving domestic partner shall be eligible for family coverage if the surviving spouse or surviving domestic partner is the court-appointed guardian of the person of a minor child or children and such minor child or children are eligible for coverage under the terms of the eligible medical plan. A surviving spouse or surviving domestic partner may continue family coverage after such child reaches the age of majority in any case where, if such child had been a surviving child of the member, such child would be an eligible surviving child for purposes of receiving a school allowance pursuant to Part 14 of this Chapter.

F. As used in this section, "medical insurance plan sponsored by the city" means an eligible medical plan as described in Section 3.28.1990, below.

G. Notwithstanding the provisions of Sections 3.28.1970.A.1., 2., and 3., and 3.28.1970.B.1., 2., and 3., members or their survivors who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this part, but who, at the time of retirement or death, could not enroll because the benefits provided in this part were not available at the time of the member's retirement for service or disability or death of the member, may enroll in an eligible insurance plan as provided for in this part on or before October 31, 1984. If a member or survivor does not enroll on or before October 31, 1984, then said members or their survivors must otherwise comply with the coverage limitations provided in Section 3.28.1970 and with all other provisions of this part.

H. A surviving spouse who would otherwise qualify for family coverage because the surviving spouse is the court-appointed guardian of the person of a minor child or children but who could not enroll because the family coverage provided in subsection E. above was not available to the surviving spouse at the time of the member's death, may enroll in family coverage in an eligible insurance plan as provided for in this part until December 30, 2002, only. Said surviving spouse must otherwise comply with the coverage limitations set forth in this Section 3.28.1970 and with all other provisions of this part.

1. Effective September 30, 2012 for Tier 2 members and effective January 4, 2013 for non-Tier 2 members, a member and/or dependent end/or survivor who is eligible for retiree healthcare benefits in the Federated City Employees' Retirement System and who is eligible for Medicare coverage shall be required to enroll in Medicare Part A and B within 6-months of reaching the age of 65. However, if a member is already retired and age 65 or older on the date this Section of the Ordinance becomes effective for such member and is eligible for Medicare coverage then the member shall be required to enroll in Medicare Part

A and B by July 1, 2013. Additionally, the plan member and/or dependent and/or survivor who is eligible for Medicare coverage shall be required to enroll in a Medicare Plan provided by the Federated City Employees' Retirement System and assign Medicare Part A and B benefits to the Medicare Plan if required by the healthcare provider.

If a plan member was hired before March 1986 and is not eligible for Medicare Part A at no cost or a plan member for any reason is not eligible for Medicare, the plan member shall be required to provide such verification from the U.S. Social Security Administration to the Department of Retirement Services within 6 months from the date the plan member becomes age 65, or if the member is already retired and age 65 or older on January 4, 2013 then by July 1, 2013. Unless such verification is provided, Plan members shall be required to enroll in a Medicare Plan provided by the Federated City Employees' Retirement System within 6 months from the dete the plan member is age 65 or if the member is retired and age 65.

If a plan member fails to meet the requirements set forth above within 6 months from the date the member becomes age 65, or if the member is retired and age 65 or older on the effective date this Section of the Ordinance becomes applicable to such member, by July 1, 2013, the Plan shall cease to provide retiree healthcare benefits until the Plan member completes such requirements. This means that the member and any qualifying dependents shall not receive retiree healthcare benefits. The Plan member and qualifying dependents shall be re-enrolled in retiree healthcare benefits beginning the first day of the following month after such requirements have been completed.

If the Plan member dies during the period which the plan member failed to complete the requirements set forth above, the eligible spouse or domestic partner and any qualifying child(ren) shall be re-enrolled in a health insurance plan. The spouse or domestic partner shall be enrolled upon attaining age 65, or

If the spouse or domestic partner is age 65 or older on the effective date, by July 1, 2013. The requirements described above regarding enrollment in Medicare Parts A and B and enrollment in a Medicare Plan provided for city retirees and dependents, and assignment of Medicare Parts A and B benefits to the Medicare Plan must be fulfilled, unless verification is provided that the spouse or domestic partner is not eligible for Medicare coverage as described in this Section. If such requirements are not met, retiree healthcare coverage will cease until such requirements are completed, in the same manner set forth above with respect to members.

SECTION 7. The provisions of this Ordinance shall be effective on January 4, 2013.

PASSED FOR PUBLICATION of title this 6th day of November, 2012, by the following vote:

AYES:	CONSTANT, HERRERA, LICCARDO, NGUYEN, OLIVERIO, ROCHA, REED.
NOES:	CAMPOS, CHU, KALRA, PYLE.
ABSENT:	NONE.
DISQUALIFIED:	NONE.

Chuck Reed
CHUCK REED
Mayor

ATTEST:
Dennis D Hawkins
DENNIS D. HAWKINS, CMC
City Clerk

The foregoing instrument is a correct copy of the original on file in this office.
Attest:
DENNIS D. HAWKINS
City Clerk
City Clerk of the City of San Jose
County of Santa Clara, State of California
By [signature] Deputy